

## INITIAL STATEMENT OF REASONS

### **PROBLEM STATEMENT**

As a result of the enactment of Senate Bill 1036 (Chapter 45, Statutes of 2012), effective June 27, 2012, as amended by Assembly Bill 1471 (Chapter 439, Statutes of 2012), effective September 22, 2012, the Public Employment Relations Board (PERB or Board) has responsibility for the administration and enforcement of the In-Home Supportive Services Employer-Employee Relations Act (IHSSEERA), which is codified at Title 23 of the Government Code, section 110000 et seq. This new legislation and the duties imposed on PERB under it require amendments to existing regulations, as well as the adoption of a new Chapter 10 of the PERB regulations in order to fully implement the Board's jurisdiction.

On December 6, 2013, PERB completed the process set forth in Government Code section 110035.5 for the adoption of emergency regulations under IHSSEERA by filing the text of the emergency regulations with the Secretary of State. The emergency regulations became effective upon filing. However, due to their emergency nature, these regulations will be repealed automatically on June 5, 2014 without further action by PERB.

### **ANTICIPATED BENEFITS OF THE PROPOSED REGULATIONS**

IHSSEERA's implementation affects hundreds of thousands of in-home supportive service (IHSS) providers in California, who are considered "employees" of the California In-Home Supportive Services Authority (Statewide Authority) for purposes of collective bargaining, and the employee organizations that represent IHSS providers under IHSSEERA. PERB has already received numerous inquiries from the Statewide Authority, IHSS providers, and employee organizations that are potentially affected by the new legislation. Current PERB regulations implement the Board's jurisdiction over this statutory scheme only through temporary emergency regulations that will expire on June 5, 2014 without further action by PERB. The existing emergency regulations extend the scope of existing regulations to matters arising under IHSSEERA and add new procedures for the filing of representation petitions and unfair practice charges for these matters. The proposed regulations will ensure that the procedural and substantive rights of IHSS providers, employee organizations, and the Statewide Authority created under IHSSEERA remain protected by making the existing emergency regulations permanent.

### **SECTION BY SECTION**

#### **A. Adoption of New Sections In Effect Pursuant to Emergency Regulations**

**Proposed section 32036** adopts a definition of "IHSSEERA," the In-Home Supportive Services Employer-Employee Relations Act (Government Code section 110000 et seq.). The In-Home Supportive Services Employer-Employee Relations Act has begun to be referred to as "IHSSEERA", and the definition in this proposed section reflects the term's common usage. Inclusion of this proposed section is necessary to promote clarity throughout PERB's regulations and especially to those sections specifically related to IHSSEERA matters.

**Proposed section 32037** adopts definition of terms applicable for cases filed under IHSSEERA.

Proposed subdivision (a) defines the term “county implementation date.” Currently, the employer of IHSS providers for purposes of collective bargaining is a county or entity established pursuant to Section 12301.6 of the Welfare and Institutions Code. The term “county implementation date” is a term of art that the Legislature has defined with technical specificity. It is the date on which the Statewide Authority will become the employer of IHSS providers for purposes of collective bargaining. Accordingly, it is a critical date when the Statewide Authority assumes the responsibilities of the employer for a group of employees in a given county and when PERB assumes jurisdiction over the Statewide Authority with regard to its conduct vis-à-vis those employees. Proposed subdivision (a) provides clarity and consistency for the meaning of “county implementation date” by ensuring that it is defined uniformly between IHSSEERA itself and the regulations governing IHSSEERA matters.

Proposed subdivision (b) defines the term “employee.” The Legislature has defined “employee” under IHSSEERA with technical specificity to exclude certain types of IHSS providers. Determining whether an IHSS provider is an “employee” within the meaning of the IHSSEERA will dictate whether that individual possesses the right to engage in the protected activities as enumerated under the Act and set forth in greater detail in these regulations. Proposed subdivision (b) provides clarity and consistency for the meaning of “employee” by ensuring that it is defined uniformly between IHSSEERA itself and the regulations governing IHSSEERA matters.

Proposed subdivision (c) defines the term “employer.” Under IHSSEERA, IHSS providers have multiple employers. After the county implementation date, the Statewide Authority is the employer for purposes of collective bargaining. However, the IHSS recipient remains the employer of an individual IHSS provider with the unconditional and exclusive right to hire, fire, and supervise his or her provider. Proposed subdivision (c) limits the definition of “employer” in these regulations to apply only to the Statewide Authority and furthers the legislative intent that IHSS recipients maintain flexibility and autonomy to make employment decisions regarding their IHSS providers without incurring liability under IHSSEERA.

Proposed subdivision (d) defines “employee organization.” Employee organizations are often parties to IHSSEERA proceedings, with the ability to file unfair practice charges and representation matters or the need to defend against the same. Although the definition of “employee organization” in proposed subdivision (d) mirrors the definition of the term as set forth in IHSSEERA itself, its inclusion in proposed section 32037 is necessary to provide clarity and consistency for the meaning of the term by ensuring that it is defined uniformly between IHSSEERA itself and the regulations governing IHSSEERA matters.

Proposed subdivision (e) defines the term “exclusive representative.” The exclusive representative is responsible for bargaining with the employer on behalf of the employees it represents. The rights and responsibilities of the exclusive representative as well as the manner of selecting the exclusive representative are set forth in IHSSEERA itself and in more detail in these regulations. Proposed subdivision (e) is necessary because IHSSEERA itself does not

define the term “exclusive representative.” Providing a definition to this term will give the parties clarity because the term is used throughout existing and new regulations.

Proposed subdivision (f) defines the term “predecessor agency.” The employer that is currently responsible for collective bargaining with the exclusive representative of IHSS providers will become the predecessor agency after the county implementation date. The predecessor agency is referenced in several places in these regulations, mainly relating to it being a party to a memorandum of understanding with the employees’ exclusive representative. On the county implementation date, the Statewide Authority shall assume the rights and obligations under any memorandum of understanding between the predecessor agency and the exclusive representative. Although the definition of “predecessor agency” in proposed subdivision (f) mirrors the definition of the term as set forth in IHSSEERA itself, its inclusion in proposed section 32037 is necessary to provide clarity and consistency for the meaning of the term by ensuring that it is defined uniformly between IHSSEERA itself and the regulations governing IHSSEERA matters.

Proposed subdivision (g) defines the term “Statewide Authority.” On the county implementation date, the Statewide Authority becomes the employer of IHSS providers for purposes of collective bargaining. In doing so it takes on the rights and obligations under any existing memorandum of understanding between the predecessor agency and the exclusive representative. It also takes on rights and obligations under IHSSEERA itself with regard to its interactions with employees and employee organizations. The Legislature created the Statewide Authority in conjunction with enacting IHSSEERA and defined it with technical specificity. Proposed subdivision (g) provides clarity and consistency for the meaning of “Statewide Authority” by ensuring that it is defined uniformly between IHSSEERA itself and the regulations governing IHSSEERA matters.

**Proposed section 32610** describes unfair practices by the employer under IHSSEERA. Government Code section 110015 provides PERB with authority to process alleged violations of IHSSEERA as unfair practice charges. Because this section does not specifically identify the types of acts that might be considered to be unfair practices, parties operating under IHSSEERA are left without guidance about how to operate within the meaning of the law. Section 32610 prohibits the types of conduct that have been traditionally identified as unfair practices under other labor relations laws. Without such rules, PERB’s only method of identifying the types of conduct that constitutes unfair practices will be through case-by-case deliberation. Such an approach would leave the parties without guidance for a long period of time.

Proposed subdivision (a) makes it an unfair practice for the employer to interfere with, intimidate, restrain, coerce or discriminate against employees because of their exercise of rights guaranteed by IHSSEERA. Labor law principles have traditionally treated this as prohibited employer conduct, as evidenced by its prohibition under the Educational Employment Relations Act (EERA), codified at Government Code section 3540 et seq., the Ralph C. Dills Act (Dills Act), codified at Government Code section 3512 et seq., the Higher Education Employer-Employee Relations Act (HEERA), codified at Government Code section 3560 et seq., the Meyers-Milias-Brown Act (MMBA), codified at Government Code section

3500 et seq., the Trial Court Employment Protection and Governance Act (Trial Court Act), codified at Government Code section 71600 et seq., the Trial Court Interpreter Employment and Labor Relations Act (Court Interpreter Act), codified at Government Code section 71800 et seq., and the Transit Employer-Employee Relations Act (TEERA), codified at Public Utilities Code section 99560 et seq.

IHSS providers fall under the jurisdiction of the MMBA until the county implementation date, at which point the Statewide Authority will become the employer for purposes of collective bargaining. There is nothing in the language of IHSSEERA or its legislative intent to suggest that the Legislature intended to augment or diminish the rights of IHSS providers upon their transition to employees under IHSSEERA. Accordingly, the addition of proposed subdivision (a) will ensure consistency in the rights of IHSS providers relative to their time as employees under the MMBA and relative to other public employees.

Proposed subdivision (b) makes it an unfair practice for the employer to deny to any employee organization rights guaranteed to it by IHSSEERA. Labor law principles have traditionally treated this as prohibited employer conduct, as evidenced by its prohibition under EERA, the Dills Act, HEERA, MMBA, the Trial Court Act, Court Interpreter Act, and TEERA.

IHSS providers fall under the jurisdiction of the MMBA until the county implementation date, at which point the Statewide Authority will become the employer for purposes of collective bargaining. There is nothing in the language of IHSSEERA or its legislative intent to suggest that the Legislature intended to augment or diminish the rights of IHSS providers upon their transition to employees under IHSSEERA. Accordingly, the addition of proposed subdivision (b) will ensure consistency in the rights of IHSS providers relative to their time as employees under the MMBA and relative to other public employees.

Proposed subdivision (c) makes it an unfair practice for the employer to fail to meet and confer in good faith with an exclusive representative. Labor law principles have traditionally treated this as prohibited employer conduct, as evidenced by its prohibition under EERA, the Dills Act, HEERA, MMBA, the Trial Court Act, the Court Interpreter Act, and TEERA.

IHSS providers fall under the jurisdiction of the MMBA until the county implementation date, at which point the Statewide Authority will become the employer for purposes of collective bargaining. There is nothing in the language of IHSSEERA or its legislative intent to suggest that the Legislature intended to augment or diminish the rights of IHSS providers upon their transition to employees under IHSSEERA. Accordingly, the addition of proposed subdivision (c) will ensure consistency in the rights of IHSS providers relative to their time as employees under the MMBA and relative to other public employees.

Proposed subdivision (d) makes it an unfair practice for the employer to dominate or interfere with the formation and administration of any employee organization, or contribute financial or other support to it, or in any way encourage employees to join any organization in preference to another. Labor law principles have traditionally treated this as prohibited employer conduct, as evidenced by its prohibition under the EERA, the Dills Act, HEERA, MMBA, the Trial Court Act, the Court Interpreter Act, and TEERA.

IHSS providers fall under the jurisdiction of the MMBA until the county implementation date, at which point the Statewide Authority will become the employer for purposes of collective bargaining. There is nothing in the language of IHSSEERA or its legislative intent to suggest that the Legislature intended to augment or diminish the rights of IHSS providers upon their transition to employees under IHSSEERA. Accordingly, the addition of proposed subdivision (d) will ensure consistency in the rights of IHSS providers relative to their time as employees under the MMBA and relative to other public employees.

Proposed subdivision (e) makes it an unfair practice for the employer to fail to exercise good faith in any impasse procedure required by IHSSEERA. Although differing in their specific procedures, EERA, the Dills Act, HEERA, MMBA, the Trial Court Act, the Court Interpreter Act, and TEERA contain procedures for the parties to follow post-impasse. An employer's duty to bargain in good faith with the exclusive representative extends past the point when the parties reach impasse. Accordingly, each of the foregoing statutory schemes makes it an unfair practice for the employer to fail to exercise good faith in the applicable impasse procedure.

IHSS providers fall under the jurisdiction of the MMBA until the county implementation date, at which point the Statewide Authority will become the employer for purposes of collective bargaining. There is nothing in the language of IHSSEERA or its legislative intent to suggest that the Legislature intended to augment or diminish the rights of IHSS providers upon their transition to employees under IHSSEERA. Accordingly, the addition of proposed subdivision (e) will ensure consistency in the rights of IHSS providers relative to their time as employees under the MMBA and relative to other public employees.

Proposed subdivision (f) makes it an unfair practice for the employer to adopt or enforce a rule or regulation that is not in conformance with IHSSEERA. The MMBA, the Trial Court Act, and the Court Interpreter Act permit the employer to promulgate rules or regulations that govern certain aspects of collective bargaining, such as the procedures an employee organization must follow to become the exclusive representative of a bargaining unit of employees. When PERB regulations and an employer's rules or regulations govern the same area, the employer's rules or regulations take precedence over PERB regulations. However, despite this deference to an employer's rules or regulations, it is an unfair practice for an employer to promulgate a rule or regulation that is inconsistent with the statutory scheme that gives it the authority to promulgate the rule or regulation in the first place.

IHSSEERA also permits the employer to promulgate rules and regulations governing certain aspects of collective bargaining. Government Code section 110035 permits an employee or employee organization to challenge such a rule or regulation as a violation of IHSSEERA, but does not set forth specifics on how to do so. Proposed subdivision (f) clarifies that such a violation will be processed as an unfair practice charge and that it is necessary to ensure that employees and employee organizations possess an administrative remedy for the employer's promulgation of a rule that is inconsistent with IHSSEERA. It also ensures that the rights of employees and employee organizations and the obligations of employers under IHSSEERA are consistent to those of similarly situated employees, employee organizations, and employers.

Proposed subdivision (g) makes it an unfair practice for the employer to in any other way violate IHSSEERA or any rule or regulation that the employer promulgates. This language mirrors the prohibition contained in PERB regulations setting forth employer unfair practices under the MMBA, the Trial Court Act, and the Court Interpreter Act. This prohibition is a corollary to the prohibition against the employer's promulgation of a rule or regulation that is inconsistent with the relevant statutory scheme. A mechanism is necessary by which an employee or employee organization aggrieved by the employer's violation of its own rule or regulation may challenge the employer's conduct. Otherwise, an employer is left free to promulgate a rule or regulation consistent with the relevant statutory scheme, but then openly violate the rule without any means of recourse for the harmed employee or employee organization.

Proposed subdivision (g) is necessary to ensure that, after the promulgation of appropriate rules and regulations, the employer abides by them. Without this subdivision, employees and employee organizations under IHSSEERA face the potential of being unable to challenge violations of rules or regulation that can affect all aspects of collective bargaining. Furthermore, inclusion of this subdivision ensures that employees under IHSSEERA are treated consistently with other public employees governed by different labor relations statutes. The "catch-all" language in proposed subdivision (g) is necessary given the breadth of the employer's authority to promulgate rules and regulations. Government Code section 110035 permits the employer under IHSSEERA to promulgate rules and regulations for "[a]ny other matters that are necessary to carry out the purposes of [IHSSEERA]." Accordingly, without the "catch-all" language, PERB regulations will be unable to accommodate the open-ended nature of the employer's authority to promulgate regulations. This would leave employees and employee organizations with no recourse if an employer engages in conduct that is inconsistent with its obligations under IHSSEERA.

**Proposed section 32611** describes unfair practices by employee organizations under IHSSEERA. Government Code section 110015 provides PERB with authority to process alleged violations of IHSSEERA as unfair practices. Because this section does not specifically identify the types of acts that might be considered to be unfair practices, parties operating under IHSSEERA are left without guidance about how to operate within the meaning of the law. Section 32611 prohibits the types of conduct that have been traditionally identified as unfair practices under other labor relations laws. Without such rules, PERB's only method of identifying the types of conduct that constitute unfair practices will be through case-by-case deliberation. Such an approach would leave the parties without guidance for a long period of time.

Proposed subdivision (a) makes it an unfair practice for an employee organization to cause or attempt to cause the employer to engage in conduct prohibited by IHSSEERA. Labor law principles have traditionally treated this as prohibited employee organization conduct, as evidenced by its prohibition under the EERA, the Dills Act, HEERA, MMBA, the Trial Court Act, the Court Interpreter Act, and TEERA.

The addition of proposed subdivision (a) will ensure consistency with regard to employee organization conduct that constitutes an unfair practice. This will avoid confusion between

the different labor relations statutes and provide employee organizations clarity regarding their obligations.

Proposed subdivision (b) makes it an unfair practice for an employee organization to interfere with, intimidate, restrain, coerce or discriminate against employees because of their exercise of rights under IHSSEERA. Labor law principles have traditionally treated this as prohibited employee organization conduct, as evidenced by its prohibition under the EERA, the Dills Act, HEERA, MMBA, the Trial Court Act, the Court Interpreter Act, and TEERA.

The addition of proposed subdivision (b) will ensure consistency with regard to employee organization conduct that constitutes an unfair practice. This will avoid confusion between the different labor relations statutes and provide employee organizations clarity regarding their obligations.

Proposed subdivision (c) makes it an unfair practice for an employee organization to refuse or fail to meet and confer in good faith as required by IHSSEERA. Labor law principles have traditionally treated this as prohibited employee organization conduct, as evidenced by its prohibition under the EERA, the Dills Act, HEERA, MMBA, the Trial Court Act, the Court Interpreter Act, and TEERA.

The addition of proposed subdivision (c) will ensure consistency with regard to employee organization conduct that constitutes an unfair practice. This will avoid confusion between the different labor relations statutes and provide employee organizations clarity regarding their obligations.

Proposed subdivision (d) makes it an unfair practice for an employee organization to fail to exercise good faith while participating in any impasse procedure required by IHSSEERA. Although differing in their specific procedures, EERA, the Dills Act, HEERA, MMBA, the Trial Court Act, the Court Interpreter Act, and TEERA contain procedures for the parties to follow post-impasse. An employee organization's duty to bargain in good faith with the employer extends past the point when the parties reach impasse. Accordingly, each of the foregoing statutory schemes makes it an unfair practice for the employee organization to fail to exercise good faith in the applicable impasse procedure

The addition of proposed subdivision (d) will ensure consistency with regard to employee organization conduct that constitutes an unfair practice. This will avoid confusion between the different labor relations statutes and provide employee organizations clarity regarding their obligations.

Proposed subdivision (e) makes it an unfair practice for the employee organization to in any other way violate IHSSEERA or any rule or regulation that the employer promulgates. This language mirrors the prohibition contained in the PERB regulations setting forth employee organization unfair practices under the MMBA, the Trial Court Act, and the Court Interpreter Act.

Proposed subdivision (e) is necessary to ensure that, after negotiating with the employer in promulgating rules and regulations, employee organizations abide by them. Without this subdivision, employers under IHSSEERA face the potential of being unable to challenge violations of rules or regulation by employee organizations. Furthermore, inclusion of this subdivision ensures that employers under IHSSEERA have the same rights as public employers governed by different labor relations statutes. The “catch-all” language in proposed subdivision (e) is necessary given the breadth of the employer’s authority to promulgate rules and regulations. Government Code section 110035 permits the employer under IHSSEERA to promulgate rules and regulations for “[a]ny other matters that are necessary to carry out the purposes of [IHSSEERA].” Accordingly, without the “catch-all” language, PERB regulations will be unable to accommodate the open-ended nature of the employer’s authority to promulgate regulations and leaves the employer with the potential for no recourse if an employee organization engages in conduct that is inconsistent with its obligations under IHSSEERA.

**Proposed section 32806** describes the process by which the Board will appoint a mediator under IHSSEERA. Government Code section 110029 makes mediation mandatory in the event the parties cannot resolve a dispute during bargaining and provides PERB with authority to promulgate rules regarding the appointment of a mediator.

Proposed subdivision (a) provides that in the event the parties cannot select a mutually agreeable mediator, either party may request in writing that the Board appoint a mediator on their behalf. Government Code section 110029 does not state who can make a request to the Board that a mediator be appointed. Proposed subdivision (a) clarifies that either party may do so because mediation is mandatory in the event of an unresolved dispute. Proposed subdivision (a) also includes procedural language requiring the party making the request to serve a copy of the request on the other party if the request is not made jointly. This is necessary to ensure that all parties are informed of any request made to the Board and can take any appropriate action in response.

Proposed subdivision (b) provides that the Board shall appoint a mediator within five working days following receipt of the written request for appointment of a mediator. This subdivision is necessary to provide the parties with a concrete timeline by which the Board will act upon a request to appoint a mediator.

Proposed subdivision (c) defines “working day” for purposes of proposed sections 32806, 32808, and 32810. This subdivision is necessary to provide clarity to the parties regarding the timeline by which the Board will act upon a request to appoint a mediator, a request for factfinding, and a request to appoint a chairperson to a factfinding panel.

Proposed subdivision (d) provides that whether the mediator is selected by mutual agreement of the parties or appointed by the Board, the costs of mediation will be split equally between the exclusive representative and the employer. This subdivision is necessary to clarify the language in Government Code section 110029 regarding the costs of mediation so that the parties are aware that the manner of selection of the mediator will not alter their obligations regarding the cost of the mediation.

**Proposed section 32808** describes the process by which the Board will convene a factfinding panel under IHSSEERA. Government Code section 110030 provides that the parties are required to submit to factfinding if mediation does not affect settlement of the dispute. Although it sets forth some specific procedural requirements, proposed section 32808 provides further clarification of those procedures.

Proposed subdivision (a) clarifies that in the event factfinding is necessary, the request to the Board that the parties' differences be submitted to factfinding does not need to be made jointly, but either party may make the request. The request does not need to be made jointly because factfinding is mandatory in the event mediation does not affect settlement of the dispute. Proposed subdivision (a) also includes a requirement that the request include a statement that the parties have been unable to effect settlement. This language is necessary so that the Board may confirm that the conditions for proceeding to factfinding have been achieved (i.e. that mediation was unsuccessful in resolving the dispute).

Proposed subdivision (b) includes procedural language requiring the party making the request to serve a copy of the request on the other party if the request is not made jointly. This is necessary to ensure that all parties are informed of any request made to the Board and can take any appropriate action in response. Proposed subdivision (b) also includes language requiring the request to be filed in the appropriate regional office, which is necessary to minimize delay in the processing of the request for factfinding.

Proposed subdivision (c) provides the procedure for the Board's initial review of requests for factfinding. Government Code section 110030 is silent on what the Board must do upon receipt of a request for factfinding. Subdivision (c) provides clarity for the parties by creating a specific procedure.

**Proposed section 32810** describes the process by which the Board will appoint a chairperson of the factfinding panel under IHSSEERA. Government Code section 110030 sets forth a general procedure for the selection of a chairperson to the factfinding panel. Proposed section 32810 provides clarity to the parties by expanding on the general procedure in Government Code section 110030 and creating specific timelines that the Board and parties must follow in the course of designating a chairperson.

**Proposed section 95000** defines the term "parties" under proposed Chapter 10 for the In-Home Supportive Services Employer-Employee Relations Act (Government Code section 110000 et seq.). This definition is necessary to provide clarity in the meaning of the term as it is used in proposed Chapter 10, which governs proceedings specific to IHSSEERA.

**Proposed section 95010** defines the term "window period" under proposed Chapter 10 for the In-Home Supportive Services Employer-Employee Relations Act (Government Code section 110000 et seq.). The window period is used to determine whether the contract bar will apply such as to require PERB to summarily dismiss a representation petition. The purpose of the contract bar is to balance the need for stability during the life a collective bargaining agreement with the employees' right to free choice of their representative. The window period creates this balance by providing a designated period of time in which a representation petition

may be properly filed during the term of a collective bargaining agreement. Accordingly, proposed section 95010 is necessary to provide clarity to the parties regarding when a representation proceeding may be initiated under IHSSEERA during the life of a collective bargaining agreement.

**Proposed section 95020** allows the withdrawal of a petition under proposed Chapter 10 for the In-Home Supportive Services Employer-Employee Relations Act (Government Code section 110000 et seq.). This section is necessary to permit parties to withdraw a petition that they know longer wish to prosecute.

**Proposed section 95030** provides for the conduct of an informal settlement conference under proposed Chapter 10 for the In-Home Supportive Services Employer-Employee Relations Act (Government Code section 110000 et seq.).

Proposed subdivision (a) grants the Board agent the authority to conduct an informal conference, which is an opportunity for the parties to resolve any disputes prior to a formal hearing. There are some instances in which an informal conference may not be appropriate given the circumstances. Accordingly, proposed subdivision (a) makes the Board agent's authority to conduct an informal conference discretionary. Proposed subdivision (a) also states that no record will be made of the informal conference. This is necessary to facilitate candid discussion.

Proposed subdivision (b) requires the Board agent to give reasonable notice of an informal conference. Reasonable notice is necessary because once a party is directed to attend, fairness dictates that the party be given enough notice of the informal conference to make plans to attend or to request that the Board agent reschedule the informal conference.

**Proposed section 95040** provides for a notice of hearing under proposed Chapter 10 for the In-Home Supportive Services Employer-Employee Relations Act (Government Code section 110000 et seq.). A hearing is conducted before the Board agent and is an opportunity for the parties to present evidence and argument in support of their positions. Accordingly, a notice of hearing is necessary to provide the parties with adequate opportunity to prepare for the hearing.

**Proposed section 95045** concerns the conduct of a hearing and issuance of a proposed decision under proposed Chapter 10 for the In-Home Supportive Services Employer-Employee Relations Act (Government Code section 110000 et seq.). PERB Regulations contain procedures in Chapter 1, Subchapter 3 for the conduct of hearings and issuance of proposed decisions. Proposed section 95045 states that any hearings conducted and proposed decisions issued in IHSSEERA matters will be conducted according to Chapter 1, Subchapter 3. Using existing regulations is necessary to avoid confusion and to maintain consistency in PERB's procedures across all of the labor relations statutes it administers.

**Proposed section 95050** provides for the issuance of an administrative decision under proposed Chapter 10 for the In-Home Supportive Services Employer-Employee Relations Act (Government Code section 110000 et seq.). Sections 32350 and 32360 govern the issuance of administrative determinations and the appeal of administrative determinations, respectively.

Proposed section 95050 states that the issuance and appeal of any administrative determinations in IHSSEERA matters will be done in accordance with Sections 32350 and 32360. Using existing regulations is necessary to avoid confusion and to maintain consistency in PERB's procedures across all of the labor relations statutes that it administers.

**Proposed section 95070** concerns procedures before the Board itself under proposed Chapter 10 for the In-Home Supportive Services Employer-Employee Relations Act (Government Code section 110000 et seq.). PERB regulations contain procedures in Chapter 1, Subchapter 4, Articles 1 through 4 governing procedures before the Board itself. Proposed section 95070 states that procedures before of the Board itself in IHSSEERA matters will be conducted according to Chapter 1, Subchapter 4, Articles 1 through 4. Using existing regulations is necessary to avoid confusion and to maintain consistency in PERB's procedures across all of the labor relations statutes it administers.

**Proposed section 95080** provides for the issuance of a decision under proposed Chapter 10 for the In-Home Supportive Services Employer-Employee Relations Act (Government Code section 110000 et seq.). It states that when the Board itself issues a decision or when a hearing officer's decision becomes final, the Board shall serve the decision and a notice of decision on the parties. Service of the decision and notice of the decision on the parties is necessary because the issuance of a decision by the Board itself or the finality of the decision of a hearing officer triggers the timeline for a party to appeal either decision. Without proper service on the parties, there will be confusion as to when the timelines begin, which will in turn frustrate the parties' right to appeal a decision.

**Proposed section 95090** concerns the eligibility to appear on an election ballot under proposed Chapter 10 for the In-Home Supportive Services Employer-Employee Relations Act (Government Code section 110000 et seq.).

Proposed subdivision (a) states that an employee organization that is a party to a representation case may appear on the ballot if it provides proof of 30 percent support in the appropriate unit. Proof of 30 percent support is the standard threshold of support that an employee organization must make to appear on a ballot in representation matters arising under the other labor relations statutes that PERB administers. Using the same threshold in IHSSEERA matters is necessary to avoid confusion and to maintain consistency in PERB's procedures across all of the labor relations statutes it administers.

Proposed subdivision (b) states that the Board shall determine the sufficiency of proof of support in accordance with Section 32700 of existing PERB regulations. Using the existing standard for determining the sufficiency of proof of support is necessary to avoid confusion and to maintain consistency in PERB's procedures across all of the labor relations statutes it administers.

**Proposed section 95100** concerns the conduct of elections under proposed Chapter 10 for the In-Home Supportive Services Employer-Employee Relations Act (Government Code section 110000 et seq.). PERB Regulations contain procedures in Chapter 1, Subchapter 6, Article 2 for the conduct of elections. Proposed section 95100 states that any elections conducted in

IHSSEERA matters will be conducted according to Chapter 1, Subchapter 6, Article 2. Using existing regulations to conduct elections is necessary to avoid confusion and to maintain consistency in PERB's procedures across all of the labor relations statutes it administers.

**Proposed section 95150** provides for the filing of a petition for certification under proposed Chapter 10 for the In-Home Supportive Services Employer-Employee Relations Act (Government Code section 110000 et seq.). Proposed subdivision (a) permits an employee organization to file a petition for certification if it wishes to become the exclusive representative of a unit consisting of employees who are not represented by an exclusive representative and enumerates information that must be contained in the petition.

Proposed subdivision (a)(1) requires the petition to include contact information of the employee organization filing the petition. This information is necessary to facilitate the Board's communication with the employee organization.

Proposed subdivision (a)(2) requires the petition to include the contact information of the employer. This information is necessary to facilitate the Board's communication with the employer.

Proposed subdivision (a)(3) requires the petition to include a description of the proposed unit. This information is necessary to apprise the Board and any interested parties of the scope of the employee organization's petition.

Proposed subdivision (a)(4) requires the petition to include an approximate number of the employees in the proposed unit. This information is necessary to apprise the Board and any interested parties of the scope of the employee organization's petition.

Proposed subdivision (a)(5) requires the petition to include the contact information of any employee organization that is known to have an interest in representing the employees in the covered unit. This information is necessary to apprise the Board and the employer of the potential for any competing representational interests for the proposed unit. It also facilitates the Board's communication with the other employee organization, if necessary.

Proposed subdivision (b) requires the petition to include proof of at least 30 percent support in the proposed unit. Proof of 30 percent support is the standard threshold for support that an employee organization must make when filing a petition for certification. Using the same threshold in petitions for certification filed under IHSSEERA matters is necessary to avoid confusion and to maintain consistency in PERB's procedures across all of the labor relations statutes it administers

Proposed subdivision (c) requires service and proof of service of the petition. Service and proof of service are necessary to ensure that all parties receive adequate notice of the petition for certification and can take any appropriate action. The proof of support is excluded from service on other parties because those documents are confidential.

**Proposed section 95160** concerns the posting of the notice of the petition for certification under proposed Chapter 10 for the In-Home Supportive Services Employer-Employee Relations Act (Government Code section 110000 et seq.). Notice of the petition is necessary to apprise employees of the petition so they may take any appropriate action.

Proposed subdivision (a) provides that the notice will be posted no later than 10 days following service of the copy of the petition. This language is necessary to provide the employer with certainty as to when it must post the notice of the petition for certification. Having the Board generate the notice of petition and provide it to the employer ensures accuracy and consistency in the form and content of the notices.

Proposed subdivision (b) provides for the manner in which the employer must provide notice to employees. This language recognizes the non-traditional nature of the workplace for IHSS providers and permits the employer to provide notice via U.S. mail, electronic mail, or “other means reasonably calculated to provide notice to the greatest number of affected employees.” The “catch-all” language is designed to provide the employer with flexibility and create an opportunity for the employer to discuss the means of posting with any affected employee organizations or employee groups. Proposed subdivision (b) is necessary to ensure that employees are properly notified of any petitions for certification.

Proposed subdivision (c) requires the notice to be posted for 15 workdays. This language is necessary given the “catch-all” language in proposed subdivision (b), which permits the employer to post a physical notice so long as it is reasonably calculated to provide notice to the greatest number of affected employees. Proposed subdivision (c) ensures that in the event the employer decides to post a physical notice, such notice will remain posted for an adequate period of time to reach affected employees.

Proposed subdivision (d) requires the employer to notify the regional office and the parties of the manner in which it posted notice of the petition. This language is necessary to enable the Board and the parties to effectively monitor and enforce the employer’s obligation to post notice.

**Proposed section 95170** concerns the manner in which the Board will determine proof of support for petitions for certification filed under proposed Chapter 10 for the In-Home Supportive Services Employer-Employee Relations Act (Government Code section 110000 et seq.). Proposed subdivision (a) requires the employer to file with the regional office a list of employees employed in the proposed unit as of the last date of the payroll period immediately preceding the date the petition was filed. This list is necessary for the Board to determine whether the petitioner has sufficiently demonstrated proof of support. The employer must provide this information because it is in possession of this information and best-suited to produce it. 20 days allows adequate time for the employer to compile the requested information. Limiting the list of employees to those who were on the payroll as of the date the petition was filed allows the Board to determine proof of support at the time the petition was filed.

Proposed subdivision (b) permits the petitioning employee organization to perfect its proof of support if the initial determination of proof of support is insufficient. Proof of support can be difficult to obtain once the employer is officially put on notice of organizing activities. At this point, the employer will often take aggressive action to campaign to its employees against organizing. Recognizing this, proposed subdivision (b) allows the petitioning employee organization to gather additional proof of employee support rather than requiring it to start from scratch when faced with an initial determination of insufficient proof of support.

Proposed subdivision (c) provides for the process by which the Board must inform the parties of its final determination of the sufficiency or lack of proof of support. This language is necessary to provide clarity to the parties regarding the Board's obligations regarding proof of support determinations.

**Proposed section 95180** concerns the employer's response to a petition for certification filed under proposed Chapter 10 for the In-Home Supportive Services Employer-Employee Relations Act (Government Code section 110000 et seq.).

Proposed subdivision (a) requires the employer to file its response within 15 days following service of the Board's determination finding sufficient proof of support. This language is necessary to create a reasonable time period in which the employer must respond to the petition.

Proposed subdivision (b) requires the employer to serve its response and provide proof of service. This language is necessary to avoid confusion regarding whether the employer complied with its obligation to provide a response to the petition.

Proposed subdivision (c) sets for a specific format for the employer to use in drafting its response. This language is necessary to ensure that the employer's response contains all relevant information.

Proposed subdivision (c)(1) requires the response to contain the employer's contact information. This information is necessary to facilitate communication with the employer.

Proposed subdivision (c)(2) requires the response to attach a copy of the petition for certification. Attaching the petition is necessary to avoid confusion as to which document the employer is responding.

Proposed subdivision (c)(3) requires the employer to state its position regarding the petition. Specifically, whether it believes there is any reason for an election not to be held. This information is necessary to put the parties on notice of the employer's objections to the petition, assuming any exist. Providing this information will also facilitate the Board's investigation and processing of the petition.

**Proposed section 95190** concerns amendments to a petition for certification filed under proposed Chapter 10 for the In-Home Supportive Services Employer-Employee Relations Act (Government Code section 110000 et seq.).

Proposed subdivision (a) allows the petitioning employee organization to amend its petition to correct any technical errors at any time prior to the issuance of a notice of hearing. This language is necessary to provide the petitioner with flexibility to correct mistakes that are non-substantive in nature. These types of omissions will most likely not affect the parties' rights, especially if the Board has yet to determine that a hearing is necessary regarding the petition. The additional language in proposed subdivision (a) is necessary to ensure that any interested parties receive notice and a copy of the amended petition.

Proposed subdivision (b) states that any amendments to the petition following the issuance of the notice of hearing are at the discretion of the hearing officer. Once the notice of hearing has issued, the parties have begun preparing in earnest to litigate a dispute involving the petition. Allowing the petitioning employee organization to make a technical amendment to the petition at this late stage has the potential to severely disrupt the proceedings by creating undue delay. Accordingly, proposed subdivision (b) is necessary to provide the hearing officer with discretion to balance the benefit of amending the petition at this late stage against any impediment caused by the amendment. In a similar vein, giving the hearing officer discretion to determine whether these amendments must be posted allows the hearing officer to balance the benefit of posting notice of the amendment against any impediment caused by the posting.

**Proposed section 95200** concerns the Board's investigation of a petition for certification filed under proposed Chapter 10 for the In-Home Supportive Services Employer-Employee Relations Act (Government Code section 110000 et seq.). The broad authority is necessary to provide the Board with flexibility in the handling of petitions for certification because it is not possible to anticipate the types of issues and situations that may arise in any given representation proceeding. Proposed section 95200 gives the Board appropriate discretion to handle these petitions on a case-by-case basis. The language that requires the Board to dismiss a petition that seeks to represent a bargaining unit not in conformance with Government Code section 110008 is necessary because IHSSEERA permits only one type of bargaining unit, a county-wide bargaining unit of IHSS providers. Accordingly, any petition that seeks certification to become the exclusive representative of a different bargaining unit is necessarily inconsistent with IHSSEERA and invalid. Processing such a petition is a waste of time and resources for all parties and the Board itself.

**Proposed section 95300** provides for the filing of a petition to rescind an agency shop agreement or provision under proposed Chapter 10 for the In-Home Supportive Services Employer-Employee Relations Act (Government Code section 110000 et seq.).

Proposed subdivision (a) references the right of a group of employees to file a petition to rescind an agency shop agreement or provision pursuant to Government Code section 110019(d). Government Code section 110019(d) creates the right for a group of employees to file a petition seeking to rescind an agency shop agreement or provision but does not set forth specific procedures for the filing of such petitions.

Proposed subdivision (b) sets forth the information that must be contained in the petition. Proposed subdivision (b)(1) requires the petition to include the contact information of the

group of employees. This information is necessary to facilitate communication with the group of employees.

Proposed subdivision (b)(2) requires the petition to include the contact information of the employer. This information is necessary to facilitate communication with the employer.

Proposed subdivision (b)(3) requires the petition to include a brief description of the established unit. This information is necessary to apprise the Board and any interested parties of the scope of the employees' petition.

Proposed subdivision (b)(4) requires the petition to include the contact information of the exclusive representative. This information is necessary to facilitate communication with the exclusive representative.

Proposed subdivision (b)(5) requires the petition to include the approximate number of employees in the established unit. This information is necessary to apprise the Board and any interested parties of the scope of the employees' petition.

Proposed subdivision (b)(6) requires the petition to include the effective and expiration dates of the current memorandum of understanding, if any, covering employees in the unit. This information is necessary to permit the parties and PERB to determine whether the petition is appropriately filed. Government Code section 110019(d) states that a petition to rescind an agency shop agreement or provision may be filed during the term of the memorandum of understanding, but that only one petition may be filed during the life of the memorandum of understanding.

Proposed subdivision (c) requires the petition to be accompanied by proof of at least 30 percent support. Proof of 30 percent support is the standard threshold for support that employees must make when filing a petition to rescind an agency shop agreement or provision. Using the same threshold in petitions filed under IHSSEERA matters is necessary to avoid confusion and to maintain consistency in PERB's procedures across all of the labor relations statutes it administers.

Proposed subdivision (d) requires service and proof of service of the petition. Service and proof of service are necessary to ensure that all parties receive adequate notice of the petition and can take any appropriate action. The proof of support is excluded from service on other parties because those documents are confidential.

**Proposed section 95310** concerns the proof of support determination for a rescission petition under proposed Chapter 10 for the In-Home Supportive Services Employer-Employee Relations Act (Government Code section 110000 et seq.).

Proposed subdivision (a) requires the employer to file with the regional office a list of employees employed in the proposed unit as of the last date of the payroll period immediately preceding the date the petition was filed. This list is necessary for the Board to determine whether the petitioner has demonstrated sufficient proof of support. The employer must

provide this information because it is in possession of this information and best-suited to produce it. 20 days allows adequate time for the employer to compile the requested information. Limiting the list of employees to those who were on the payroll as of the date the petition was filed allows the Board to determine proof of support at the time the petition was filed.

Proposed subdivision (b) permits the petitioning group of employees to perfect its proof of support if the initial determination of proof of support is insufficient. Proof of support can be difficult to obtain once the exclusive representative is officially put on notice of a petition to rescind an agency shop agreement or provision. At this point, the exclusive representative will often take aggressive action to campaign to its members against rescission. Recognizing this, proposed subdivision (b) allows the petitioning group of employees to gather additional proof of employee support rather than requiring it to start from scratch when faced with an initial determination of insufficient proof of support.

Proposed subdivision (c) provides for the process by which the Board must inform the parties of its final determination of the sufficiency or lack thereof of proof of support. This language is necessary to provide clarity to the parties regarding the Board's obligations regarding proof of support determinations.

**Proposed section 95320** concerns the conduct of an election on a rescission petition under proposed Chapter 10 for the In-Home Supportive Services Employer-Employee Relations Act (Government Code section 110000 et seq.).

Proposed subdivision (a) states that if the petition is determined to be adequate, a rescission election will be conducted consistent with existing PERB regulations. The use of established procedures in conducting the election is necessary to avoid confusion and to maintain consistency in PERB's procedures across all of the labor relations statutes it administers.

Proposed subdivision (b) states that the agency shop agreement or provision will be rescinded if a majority of the employees in the bargaining unit vote to rescind the agreement. This language provides clarity to the parties regarding the necessary number of votes that must be achieved to rescind the agency shop agreement or provision.

**Proposed section 95330** describes when a bar to the filing of a rescission petition would exist under proposed Chapter 10 for the In-Home Supportive Services Employer-Employee Relations Act (Government Code section 110000 et seq.). Government Code section 110019(d) prohibits an agency shop election from proceeding if there has been a prior rescission election conducted during the term of the existing memorandum of understanding. Accordingly, any petition that seeks to rescind an agency shop agreement or provision when a prior rescission election has been conducted during the term of the existing memorandum of understanding is necessarily inconsistent with IHSSEERA and invalid. Proposed section 95330 recognizes the invalidity of such a provision and permits the Board to summarily dismiss the petition in order to avoid a waste of time and resources for all parties and the Board itself.

## B. Amendments to the Text of Existing Regulations

**Section 32085** provides a definition of the term “workday” for matters over which the Board has jurisdiction.

Subdivision (h) amends this section to provide a definition for the term “workday” for matters arising under IHSSEERA. PERB regulations require parties to engage in specific conduct for a specified period of “workdays,” such as posting a notice of a petition for certification. Adding a definition of the term “workday” for matters arising under IHSSEERA provides clarity to the parties regarding their obligations.

**Section 32100** provides for when regulations contained in Chapter 1 apply to PERB proceedings. Chapter 1 contains nine subchapters: (1) Internal Procedure; (2) Definitions and General Provisions; (3) Hearings; (4) Decisions of the Board Itself; (5) Unfair Practice Proceedings; (6) Representation Proceedings; (7) Compliance; (8) Agency Fee Regulations; and (9) State Mediation and Conciliation Service. The vast majority of Chapter 1 contains provisions that apply to all PERB proceedings. For example, requirements for filing documents with PERB or the manner in which final Board orders are enforced. Where Chapter 1 does not apply to a given PERB proceeding, Section 32100 so states.

Subdivision (g) amends this section to provide that all of Chapter 1 will apply to matters arising under IHSSEERA, except Article 5 of Subchapter 6, which governs petitions for unit modification. IHSSEERA states that, “Bargaining units consisting of employees in a single county shall be the only appropriate unit for collective bargaining.” (Gov’t. Code, § 110008.) Accordingly, there is no situation in which a petition for unit modification could be appropriately filed with PERB. Providing that Article 5 of Subchapter 6 does not apply to matters arising under IHSSEERA avoids confusion and the unnecessary filing of non-meritorious petitions for unit modification.

**Section 32120** provides for the filing of collective bargaining agreements. PERB must at times review the terms and conditions of a collective bargaining agreement in the course of carrying out its duties. PERB needs the authority to demand that an employer provide a collective bargaining agreement upon request because there are times when the employer will not provide the information voluntarily. It is incumbent upon the employer to bear the responsibility of production because it is in a better position than employee organizations or individual employees to maintain and reproduce records, such as collective bargaining agreements.

The proposed new language to Section 32120 extends its application to matters arising under IHSSEERA and is necessary to facilitate the resolution of unfair practice charges and representation proceedings arising under IHSSEERA.

**Section 32122** currently specifies in which “regional office” representation filings should be made, except for filings under the Dills Act and HEERA.

The amendment to subdivision (a) and addition of new subdivision (c) provides for application of this section to matters arising under IHSSEERA. This language is necessary to provide clarity to members of the public regarding where to file representation matters and to facilitate the timely and orderly processing of representation matters.

**Section 32130** addresses the computation of time for filing.

Subdivision (a) includes an exception to the general rule for computation of time. The exception is based on Section 32776, which addresses when PERB must summarily dismiss a decertification petition under EERA, the Dills Act, HEERA, and TEERA. One instance is when the decertification petition is filed outside the designated “window period” in a memorandum of understanding between the employer and exclusive representative. The “window period” is a specifically defined period of time for each statutory scheme.

The proposed change to subdivision (a) includes a reference to new subdivision (g) in Section 32776. This new subdivision addresses when PERB must summarily dismiss a decertification petition filed under IHSSEERA, including when it is filed outside a designated “window period” as defined in proposed Section 95010. This update is necessary to provide clarity to the parties and to maintain consistency in PERB’s treatment of representation matters across all of the statutory schemes over which the Board has jurisdiction.

**Section 32142** concerns designation of recipients for service and filing.

Subdivision (c)(8) amends this section to designate a recipient for service at the Statewide Authority. The recipient includes an individual designated to receive service at the Statewide Authority, the Department of Social Services, and the Department of Human Resources. Service in this manner is required because all three agencies are involved in the Coordinated Care Initiative, of which IHSSEERA is just one part. The Department of Social Services oversees the provision of in-home supportive services generally, the Statewide Authority is responsible for collective bargaining with the exclusive representatives of IHSS providers, and the Department of Human Resources provides legal counsel to both the Department of Social Services and the Statewide Authority.

**Section 32147** provides for expediting matters before the Board.

Subdivision (a) enumerates specific representation matters that may be expedited. These matters are typically expedited because it is in the best interest of all parties to quickly resolve any matters involving employee choice of their representative. The amendment to subdivision (a) adds a reference to proposed Section 95150, which governs the filing of a petition for certification under IHSSEERA. This amendment will allow for the timely resolution to these types of petitions and provides consistency in PERB’s procedures.

**Section 32155** concerns the circumstances under which a Board agent or Board member will be disqualified to hear a case.

Subdivision (h) states that parties to cases arising under the MMBA, the Dills Act, EERA, HEERA, the Trial Court Act, the Court Interpreter Act, and TEERA may include a matter of claimed disqualification in a writ of extraordinary relief seeking judicial review of the Board's decision on the merits. The amendment to subdivision (h) adds a reference to the section of IHSSEERA that governs a party's right to file a petition for a writ of extraordinary relief seeking judicial review. This amendment is necessary to ensure that a party that is aggrieved by the Board's decision in a matter regarding disqualification is able to challenge the Board's decision if they feel it necessary.

**Section 32305** provides that proposed decisions become final if no timely exceptions are filed.

Subdivision (b) states that in representation matters arising under the EERA, the Dills Act, HEERA, MMBA, TEERA, the Trial Court Act, and the Court Interpreter Act, a Board agent's decision becomes final unless the Board itself issues a decision not later than 180 days from the date exceptions were filed with the Board. The amendment to subdivision (b) includes a reference to proposed section 95150, which concerns petitions for certification under IHSSEERA. This amendment is necessary to ensure that representation matters are treated consistently across the statutory schemes that PERB administers and to avoid confusion by the parties to representation matters arising under IHSSEERA.

**Section 32500** provides for requests for judicial review concerning representation cases. Parties to cases arising under EERA, the Dills Act, HEERA, and TEERA cannot seek judicial review of a decision by the Board itself in a representation matter absent the Board joining in the appeal. Parties to cases arising under IHSSEERA may seek judicial review of representation matters without the Board joining in the appeal.

The amendment to subdivision (a) includes a reference to proposed Chapter 10, which governs representation matters under IHSSEERA. This amendment is necessary to clarify the parties' right to judicial review in matters arising under IHSSEERA and the limited scope of Section 32500.

**Section 32602** provides for the processing of unfair practice charges.

Subdivision (a) sets forth the alleged violations that PERB will process as unfair practice charges. IHSSEERA provides PERB with the authority to investigate an alleged violation of IHSSEERA itself or a rule or regulation adopted by the Statewide Authority as an unfair practice charge. The amendments to subdivision (a) reference the authority provided to PERB and are necessary to clarify PERB's jurisdiction over unfair practice charges arising under IHSSEERA.

Under the MMBA, the Trial Court Act, and the Court Interpreter Act, a recognized employee organization that has agreed to an agency shop provision or is a party to an agency shop arrangement must provide a written financial report to its members and the employer within a designated time after the end of each fiscal year. Subdivision (e) references this obligation and states that only the employer or affected employee has standing to allege a violation of this obligation as an unfair practice charge. The amendment to subdivision (e) includes a reference

to Government Code 110019(e), which is a parallel provision in IHSSEERA creating an identical obligation to a recognized employee organization that has agreed to an agency shop provision or is a party to an agency shop arrangement. The amendment to subdivision (e) is necessary to clarify PERB's jurisdiction over unfair practice charges arising under IHSSEERA and to clarify who has standing to bring this particular type of unfair practice charge against a recognized employee organization.

**Section 32615** concerns the information required to be included in an unfair practice charge.

Subdivision (a)(4) requires a charging party to list the sections of the Government Code or applicable local rule that are alleged to have been violated. The amendment to subdivision (a)(4) strikes language that is deemed to be duplicative because the MMBA, Trial Court Act, and Court Interpreter Act are all codified within the Government Code. The amendment to subdivision (a)(4) adds a requirement that a charging party alleging a violation of a rule or regulation adopted by the Statewide Authority under IHSSEERA include a reference to that rule or regulation. This amendment is necessary to easily identify the source of the alleged violation and to facilitate the timely processing of unfair practice charges.

**Section 32620** concerns the processing of unfair practice charges.

Subdivision (b)(6) codifies the Board's policy regarding deferral to arbitration. The amendment to subdivision (b)(6) adds a reference to IHSSEERA and is necessary to maintain consistency in the processing of unfair practice charges across all of the statutory schemes over which the Board maintains jurisdiction.

**Section 32661** concerns the filing of repugnancy claims regarding unfair practice charge cases deferred to arbitration.

Subdivision (a) provides that an unfair practice charge may be filed based on a claim that a settlement or arbitration award resulting from a deferred unfair practice charge is repugnant to the applicable Act. The amendment to subdivision (a) adds a reference to IHSSEERA and is necessary to maintain consistency in the processing of unfair practice charges across all of the statutory schemes over which the Board maintains jurisdiction.

**Section 32700** concerns the requirements for valid proof of employee support in representation proceedings.

Subdivision (a)(3) concerns proof of employee support for petitions seeking to rescind organizational security arrangements. The amendment to subdivision (a)(3) adds a reference to proposed Section 95300, which governs such petitions under IHSSEERA. The amendment is necessary to reflect the Legislature's extension of the Board's responsibilities to include jurisdiction over matters arising under IHSSEERA.

**Section 32720** provides for when an election will be conducted in representation matters arising under EERA, the Dills Act, HEERA, and TEERA. The amendment to this section adds a reference to IHSSEERA. This language is necessary to ensure that the Board has authority to

order that an election be conducted in a disputed representation matter arising under IHSSEERA.

**Section 32721** defines the term “parties” in representation matters arising under EERA, the Dills Act, HEERA, and TEERA. The amendment to this section extends the definition of “parties” to include employees, employee organizations, and employers in representation matters arising under IHSSEERA. This language is necessary to provide clarity to the parties and ensure that the provisions in Chapter 1 governing representation proceedings apply to matters arising under IHSSEERA.

**Section 32724** provides for notification to employees in a voting unit when an election is to be conducted.

Subdivision (b) sets forth the requirements for posting the notice of election, which is necessary to inform the employees in a voting unit of an upcoming election. Traditionally, a notice of election is posted in a central location or locations accessible to all employees. For example, a notice of election may be posted on a bulletin board in a break room used by all employees. However, the nature of the workplace for IHSS providers does not make it conducive to the traditional manner of posting notices. IHSS providers work directly in the homes of IHSS recipients. They report directly to the homes of IHSS recipients and do not report to a central location, even for administrative tasks, such as submitting timesheets or collecting pay warrants. Accordingly, there is no central location in which a notice of election can be posted in the traditional sense.

The addition of new subdivision (b)(2) adds posting language specific to elections conducted under IHSSEERA. This language recognizes the non-traditional nature of the workplace for IHSS providers and permits the employer to provide notice via U.S. mail, electronic mail, or “other means reasonably calculated to provide notice to the greatest number of affected employees.” The “catch-all” language is designed to provide the employer with increased flexibility and create an opportunity for the employer to discuss the means of posting with any affected employee organizations or employee groups. The addition of new subdivision (b)(2) is necessary to ensure that employees in representation matters arising under IHSSEERA are properly notified of any election, which necessarily implicates their right to choose their exclusive representative.

**Section 32754** provides for when the Board must summarily dismiss a petition requiring a representation election. Under EERA, the Dills Act, HEERA, and TEERA a petition requiring a representation election must be dismissed if either of the following conditions exist: (1) the petition is filed outside of a designated “window period” for a current collective bargaining agreement between the employer and exclusive representative; or (2) a representation election result has been certified affecting the described unit or a portion thereof within 12 months immediately preceding the date of filing of the petition. The former is colloquially referred to as “the contract bar” and the latter as the “certification bar.” The purpose of the contract bar is to balance the need for stability during the life a collective bargaining agreement with the employees’ right to free choice of their representative. The purpose of the certification bar is

to provide an insulating period of 12 months to permit the employee organization to represent its unit and negotiate with the employer without interference with its representational rights.

New subdivision (e) includes language to ensure that the contract bar and certification bar apply to representation petitions arising under IHSSEERA. This language is necessary to ensure consistency in the way PERB treats representation petitions filed under the various statutes over which it maintains jurisdiction and in order to promote labor stability during the life of a collective bargaining agreement and after an exclusive representative is newly-elected.

**Section 32772** provides for notification to employees in a voting unit when a decertification petition has been filed.

Subdivision (b) sets forth the requirements for posting notice of the decertification petition, which is necessary to inform the employees in a bargaining unit of the existence of the decertification petition and their rights in light of the petition. Traditionally, a notice of a decertification petition is posted in a central location or locations accessible to all employees. For example, a notice of a decertification petition may be posted on a bulletin board in a break room used by all employees. However, the nature of the workplace for IHSS providers does not make it conducive to the traditional manner of posting notices. IHSS providers work directly in the homes of IHSS recipients. They report directly to the homes of IHSS recipients and do not report to a central location, even for administrative tasks, such as submitting timesheets or collecting pay warrants. Accordingly, there is no central location in which a notice of a decertification petition can be posted in the traditional sense.

The addition of new subdivision (b)(2) adds posting language specific to decertification petitions filed under IHSSEERA. This language recognizes the non-traditional nature of the workplace for IHSS providers and permits the employer to provide notice of the decertification petition via U.S. mail, electronic mail, or “other means reasonably calculated to provide notice to the greatest number of affected employees.” The “catch-all” language is designed to provide the employer with increased flexibility and create an opportunity for the employer to discuss the means of posting with any affected employee organizations or employee groups. The addition of new subdivision (b)(2) is necessary to ensure that employees are properly notified of any decertification petitions filed under IHSSEERA, which necessarily implicate their right to choose their exclusive representative.

Subdivision (c) sets for the time that a notice of decertification petition must be posted. The amendment to subdivision (c) includes language requiring a notice of a decertification petition filed under IHSSEERA to be posted for a minimum of 20 days. This amendment is necessary to ensure that employees have sufficient time to view the notice and take any action related to the notice.

**Section 32776** provides for the Board’s procedure for investigating petitions for decertification. The Board must summarily dismiss a petition requiring a representation election under the EERA, the Dills Act, HEERA, and TEERA if either of the following conditions exist: (1) the petition is filed outside of a designated “window period” for a current collective bargaining agreement between the employer and exclusive representative; or (2) a

representation election result has been certified affecting the described unit or a portion thereof within 12 months immediately preceding the date of filing of the petition. The former is colloquially referred to as “the contract bar” and the latter as the “certification bar.” The purpose of the contract bar is to balance the need for stability during the life a collective bargaining agreement with the employees’ right to free choice of their representative. The purpose of the certification bar is to provide an insulating period of 12 months to permit the employee organization to represent its unit and negotiate with the employer without interference with its representational rights.

New subdivision (g) includes language to ensure that the contract bar and certification bar apply to petitions for decertification filed under IHSSEERA. This language is necessary to ensure consistency in the way PERB treats petitions for decertification filed under the various statutes over which it maintains jurisdiction and in order to promote labor stability during the life of a collective bargaining agreement and after an exclusive representative is newly-elected.

New subdivision (h) (formerly subdivision (g)), defines “window period.” The amendment to this subdivision adds a reference to the “window period” for matters filed under IHSSEERA. This amendment is necessary to provide clarity to the parties by ensuring that the term “window period” is defined consistently across the sections that effect representation matters arising under IHSSEERA.

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

**Section 31001** provides for meetings of the Public Employment Relations Board. The proposed changes do not make any changes to the text of this section, but only update the authority and reference citations. This update is necessary to reflect the Legislature’s extension of the Board’s responsibilities to include jurisdiction over matters arising under IHSSEERA.

**Section 32020** provides a definition for the term “Board.” The proposed changes do not make any changes to the text of this section, but only update the authority and reference citations. This update is necessary to reflect the Legislature’s extension of the Board’s responsibilities to include jurisdiction over matters arising under IHSSEERA.

**Section 32030** provides a definition for the term “Board itself.” The proposed changes do not make any changes to the text of this section, but only update the authority and reference citations. This update is necessary to reflect the Legislature’s extension of the Board’s responsibilities to include jurisdiction over matters arising under IHSSEERA.

**Section 32040** provides a definition for the term “Executive Director.” The proposed changes do not make any changes to the text of this section, but only update the authority and reference citations. This update is necessary to reflect the Legislature’s extension of the Board’s responsibilities to include jurisdiction over matters arising under IHSSEERA.

**Section 32050** provides a definition for the term “General Counsel.” The proposed changes do not make any changes to the text of this section, but only update the authority and reference

citations. This update is necessary to reflect the Legislature's extension of the Board's responsibilities to include jurisdiction over matters arising under IHSSEERA.

**Section 32055** provides a definition for the term "Chief Administrative Law Judge." The proposed changes do not make any changes to the text of this section, but only update the authority and reference citations. This update is necessary to reflect the Legislature's extension of the Board's responsibilities to include jurisdiction over matters arising under IHSSEERA.

**Section 32060** provides a definition for the term "headquarters office." The proposed changes do not make any changes to the text of this section, but only update the authority and reference citations. This update is necessary to reflect the Legislature's extension of the Board's responsibilities to include jurisdiction over matters arising under IHSSEERA.

**Section 32075** provides a definition for the term "regional office." The proposed changes do not make any changes to the text of this section, but only update the authority and reference citations. This update is necessary to reflect the Legislature's extension of the Board's responsibilities to include jurisdiction over matters arising under IHSSEERA.

**Section 32080** provides a definition for the term "day." The proposed changes do not make any changes to the text of this section, but only update the authority and reference citations. This update is necessary to reflect the Legislature's extension of the Board's responsibilities to include jurisdiction over matters arising under IHSSEERA.

**Section 32090** provides for filing by facsimile machine. The proposed changes do not make any changes to the text of this section, but only update the authority and reference citations. This update is necessary to reflect the Legislature's extension of the Board's responsibilities to include jurisdiction over matters arising under IHSSEERA.

**Section 32091** provides for filing by electronic mail message. The proposed changes do not make any changes to the text of this section, but only update the authority and reference citations. This update is necessary to reflect the Legislature's extension of the Board's responsibilities to include jurisdiction over matters arising under IHSSEERA.

**Section 32105** provides for the severability of PERB's regulations. The proposed changes do not make any changes to the text of this section, but only update the authority and reference citations. This update is necessary to reflect the Legislature's extension of the Board's responsibilities to include jurisdiction over matters arising under IHSSEERA.

**Section 32132** concerns the requirements for an extension of time in which to file documents with the Board. The proposed changes do not make any changes to the text of this section, but only update the authority and reference citations. This update is necessary to reflect the Legislature's extension of the Board's responsibilities to include jurisdiction over matters arising under IHSSEERA.

**Section 32135** concerns filing requirements. The proposed changes do not make any changes to the text of this section, but only update the authority and reference citations. This update is necessary to reflect the Legislature's extension of the Board's responsibilities to include jurisdiction over matters arising under IHSSEERA.

**Section 32136** concerns late filing requirements. The proposed changes do not make any changes to the text of this section, but only update the authority and reference citations. This update is necessary to reflect the Legislature's extension of the Board's responsibilities to include jurisdiction over matters arising under IHSSEERA.

**Section 32140** concerns service requirements. The proposed changes do not make any changes to the text of this section, but only update the authority and reference citations. This update is necessary to reflect the Legislature's extension of the Board's responsibilities to include jurisdiction over matters arising under IHSSEERA.

**Section 32145** concerns the waiver of time period requirements for filing. The proposed changes do not make any changes to the text of this section, but only update the authority and reference citations. This update is necessary to reflect the Legislature's extension of the Board's responsibilities to include jurisdiction over matters arising under IHSSEERA.

**Section 32149** concerns the issuance of investigative subpoenas. The proposed changes do not make any changes to the text of this section, but only update the authority and reference citations. This update is necessary to reflect the Legislature's extension of the Board's responsibilities to include jurisdiction over matters arising under IHSSEERA.

**Section 32150** concerns the issuance of subpoenas. The proposed changes do not make any changes to the text of this section, but only update the authority and reference citations. This update is necessary to reflect the Legislature's extension of the Board's responsibilities to include jurisdiction over matters arising under IHSSEERA.

**Section 32162** concerns the confidentiality of Board investigations. The proposed changes do not make any changes to the text of this section, but only update the authority and reference citations. This update is necessary to reflect the Legislature's extension of the Board's responsibilities to include jurisdiction over matters arising under IHSSEERA.

**Section 32164** concerns an application for joinder. The proposed changes do not make any changes to the text of this section, but only update the authority and reference citations. This update is necessary to reflect the Legislature's extension of the Board's responsibilities to include jurisdiction over matters arising under IHSSEERA.

**Section 32165** concerns an application to join a representation hearing as a limited party. The proposed changes do not make any changes to the text of this section, but only update the authority and reference citations. This update is necessary to reflect the Legislature's extension of the Board's responsibilities to include jurisdiction over matters arising under IHSSEERA.

**Section 32166** concerns an application to join a representation hearing as a full party. The proposed changes do not make any changes to the text of this section, but only update the authority and reference citations. This update is necessary to reflect the Legislature's extension of the Board's responsibilities to include jurisdiction over matters arising under IHSSEERA.

**Section 32168** concerns the conduct of hearings. The proposed changes do not make any changes to the text of this section, but only update the authority and reference citations. This update is necessary to reflect the Legislature's extension of the Board's responsibilities to include jurisdiction over matters arising under IHSSEERA.

**Section 32169** concerns the taking of depositions. The proposed changes do not make any changes to the text of this section, but only update the authority and reference citations. This update is necessary to reflect the Legislature's extension of the Board's responsibilities to include jurisdiction over matters arising under IHSSEERA.

**Section 32170** concerns the powers and authority of a Board agent conducting a hearing. The proposed changes do not make any changes to the text of this section, but only update the authority and reference citations. This update is necessary to reflect the Legislature's extension of the Board's responsibilities to include jurisdiction over matters arising under IHSSEERA.

**Section 32175** concerns the rules of evidence in representation cases. The proposed changes do not make any changes to the text of this section, but only update the authority and reference citations. This update is necessary to reflect the Legislature's extension of the Board's responsibilities to include jurisdiction over matters arising under IHSSEERA.

**Section 32176** concerns the rules of evidence in unfair practice cases. The proposed changes do not make any changes to the text of this section, but only update the authority and reference citations. This update is necessary to reflect the Legislature's extension of the Board's responsibilities to include jurisdiction over matters arising under IHSSEERA.

**Section 32178** concerns the burden of proof in unfair practice cases. The proposed changes do not make any changes to the text of this section, but only update the authority and reference citations. This update is necessary to reflect the Legislature's extension of the Board's responsibilities to include jurisdiction over matters arising under IHSSEERA.

**Section 32180** addresses the rights of the parties in PERB hearings. The proposed changes do not make any changes to the text of this section, but only update the authority and reference citations. This update is necessary to reflect the Legislature's extension of the Board's responsibilities to include jurisdiction over matters arising under IHSSEERA.

**Section 32185** concerns ex parte communications with Board agents. The proposed changes do not make any changes to the text of this section, but only update the authority and reference citations. This update is necessary to reflect the Legislature's extension of the Board's responsibilities to include jurisdiction over matters arising under IHSSEERA.

**Section 32190** concerns filing and rulings on motions. The proposed changes do not make any changes to the text of this section, but only update the authority and reference citations. This update is necessary to reflect the Legislature's extension of the Board's responsibilities to include jurisdiction over matters arising under IHSSEERA.

**Section 32200** concerns the appeal of rulings on motions and other interlocutory matters. The proposed changes do not make any changes to the text of this section, but only update the authority and reference citations. This update is necessary to reflect the Legislature's extension of the Board's responsibilities to include jurisdiction over matters arising under IHSSEERA.

**Section 32205** concerns requests for continuances. The proposed changes do not make any changes to the text of this section, but only update the authority and reference citations. This update is necessary to reflect the Legislature's extension of the Board's responsibilities to include jurisdiction over matters arising under IHSSEERA.

**Section 32206** concerns the production of statements of witnesses after testimony. The proposed changes do not make any changes to the text of this section, but only update the authority and reference citations. This update is necessary to reflect the Legislature's extension of the Board's responsibilities to include jurisdiction over matters arising under IHSSEERA.

**Section 32207** concerns stipulation of facts for purposes of hearing. The proposed changes do not make any changes to the text of this section, but only update the authority and reference citations. This update is necessary to reflect the Legislature's extension of the Board's responsibilities to include jurisdiction over matters arising under IHSSEERA.

**Section 32209** addresses the procedure for correction of hearing transcripts. The proposed changes do not make any changes to the text of this section, but only update the authority and reference citations. This update is necessary to reflect the Legislature's extension of the Board's responsibilities to include jurisdiction over matters arising under IHSSEERA.

**Section 32210** concerns the filing of informational briefs and oral argument. The proposed changes do not make any changes to the text of this section, but only update the authority and reference citations. This update is necessary to reflect the Legislature's extension of the Board's responsibilities to include jurisdiction over matters arising under IHSSEERA.

**Section 32212** concerns briefs and oral argument. The proposed changes do not make any changes to the text of this section, but only update the authority and reference citations. This update is necessary to reflect the Legislature's extension of the Board's responsibilities to include jurisdiction over matters arising under IHSSEERA.

**Section 32215** concerns issuance of proposed decisions. The proposed changes do not make any changes to the text of this section, but only update the authority and reference citations. This update is necessary to reflect the Legislature's extension of the Board's responsibilities to include jurisdiction over matters arising under IHSSEERA.

**Section 32220** concerns contemptuous conduct by a party or a party's agent. The proposed changes do not make any changes to the text of this section, but only update the authority and reference citations. This update is necessary to reflect the Legislature's extension of the Board's responsibilities to include jurisdiction over matters arising under IHSSEERA.

**Section 32230** concerns the refusal of a witness to testify. The proposed changes do not make any changes to the text of this section, but only update the authority and reference citations. This update is necessary to reflect the Legislature's extension of the Board's responsibilities to include jurisdiction over matters arising under IHSSEERA.

**Section 32295** concerns ex parte communications with members of the Board itself or legal advisers to Board members. The proposed changes do not make any changes to the text of this section, but only update the authority and reference citations. This update is necessary to reflect the Legislature's extension of the Board's responsibilities to include jurisdiction over matters arising under IHSSEERA.

**Section 32300** concerns the filing of exceptions to Board agent decisions. The proposed changes do not make any changes to the text of this section, but only update the authority and reference citations. This update is necessary to reflect the Legislature's extension of the Board's responsibilities to include jurisdiction over matters arising under IHSSEERA.

**Section 32310** provides for the filing of responses to exceptions. The proposed changes do not make any changes to the text of this section, but only update the authority and reference citations. This update is necessary to reflect the Legislature's extension of the Board's responsibilities to include jurisdiction over matters arising under IHSSEERA.

**Section 32315** provides for oral argument on exceptions. The proposed changes do not make any changes to the text of this section, but only update the authority and reference citations. This update is necessary to reflect the Legislature's extension of the Board's responsibilities to include jurisdiction over matters arising under IHSSEERA.

**Section 32320** concerns issuance of decisions by the Board itself. The proposed changes do not make any changes to the text of this section, but only update the authority and reference citations. This update is necessary to reflect the Legislature's extension of the Board's responsibilities to include jurisdiction over matters arising under IHSSEERA.

**Section 32325** concerns the remedial powers of the Board. The proposed changes do not make any changes to the text of this section, but only update the authority and reference citations. This update is necessary to reflect the Legislature's extension of the Board's responsibilities to include jurisdiction over matters arising under IHSSEERA.

**Section 32350** provides for a definition of administrative decisions. The proposed changes do not make any changes to the text of this section, but only update the authority and reference citations. This update is necessary to reflect the Legislature's extension of the Board's responsibilities to include jurisdiction over matters arising under IHSSEERA.

**Section 32360** concerns requirements for appeals of administrative decisions. The proposed changes do not make any changes to the text of this section, but only update the authority and reference citations. This update is necessary to reflect the Legislature's extension of the Board's responsibilities to include jurisdiction over matters arising under IHSSEERA.

**Section 32370** concerns requests for a stay. The proposed changes do not make any changes to the text of this section, but only update the authority and reference citations. This update is necessary to reflect the Legislature's extension of the Board's responsibilities to include jurisdiction over matters arising under IHSSEERA.

**Section 32375** provides for responses to administrative appeals. The proposed changes do not make any changes to the text of this section, but only update the authority and reference citations. This update is necessary to reflect the Legislature's extension of the Board's responsibilities to include jurisdiction over matters arising under IHSSEERA.

**Section 32380** provides for administrative decisions that are not appealable. The proposed changes do not make any changes to the text of this section, but only update the authority and reference citations. This update is necessary to reflect the Legislature's extension of the Board's responsibilities to include jurisdiction over matters arising under IHSSEERA.

**Section 32400** provides that a motion for reconsideration is not required in order to exhaust administrative remedies. The proposed changes do not make any changes to the text of this section, but only update the authority and reference citations. This update is necessary to reflect the Legislature's extension of the Board's responsibilities to include jurisdiction over matters arising under IHSSEERA.

**Section 32410** provides for the filing of requests for reconsideration. The proposed changes do not make any changes to the text of this section, but only update the authority and reference citations. This update is necessary to reflect the Legislature's extension of the Board's responsibilities to include jurisdiction over matters arising under IHSSEERA.

**Section 32450** concerns the filing of requests for injunctive relief. The proposed changes do not make any changes to the text of this section, but only update the authority and reference citations. This update is necessary to reflect the Legislature's extension of the Board's responsibilities to include jurisdiction over matters arising under IHSSEERA.

**Section 32455** concerns the investigation of requests for injunctive relief. The proposed changes do not make any changes to the text of this section, but only update the authority and reference citations. This update is necessary to reflect the Legislature's extension of the Board's responsibilities to include jurisdiction over matters arising under IHSSEERA.

**Section 32460** provides for recommendations by the General Counsel concerning requests for injunctive relief. The proposed changes do not make any changes to the text of this section, but only update the authority and reference citations. This update is necessary to reflect the Legislature's extension of the Board's responsibilities to include jurisdiction over matters arising under IHSSEERA.

**Section 32465** provides for decisions by the Board itself concerning requests for injunctive relief. The proposed changes do not make any changes to the text of this section, but only update the authority and reference citations. This update is necessary to reflect the Legislature’s extension of the Board’s responsibilities to include jurisdiction over matters arising under IHSSEERA.

**Section 32470** addresses the authority of the General Counsel concerning requests for injunctive relief where a quorum of the Board itself is unavailable. The proposed changes do not make any changes to the text of this section, but only update the authority and reference citations. This update is necessary to reflect the Legislature’s extension of the Board’s responsibilities to include jurisdiction over matters arising under IHSSEERA.

**Section 32605** concerns the number of copies of unfair practice charges required for filing. The proposed changes do not make any changes to the text of this section, but only update the authority and reference citations. This update is necessary to reflect the Legislature’s extension of the Board’s responsibilities to include jurisdiction over matters arising under IHSSEERA.

**Section 32612** specifies in which “regional office” unfair practice charge filings should be made. The proposed changes do not make any changes to the text of this section, but only update the authority and reference citations. This update is necessary to reflect the Legislature’s extension of the Board’s responsibilities to include jurisdiction over matters arising under IHSSEERA.

**Section 32621** concerns the amending of unfair practice charges. The proposed changes do not make any changes to the text of this section, but only update the authority and reference citations. This update is necessary to reflect the Legislature’s extension of the Board’s responsibilities to include jurisdiction over matters arising under IHSSEERA.

**Section 32625** concerns the withdrawal of unfair practice charges. The proposed changes do not make any changes to the text of this section, but only update the authority and reference citations. This update is necessary to reflect the Legislature’s extension of the Board’s responsibilities to include jurisdiction over matters arising under IHSSEERA.

**Section 32630** concerns the dismissal of unfair practice charges. The proposed changes do not make any changes to the text of this section, but only update the authority and reference citations. This update is necessary to reflect the Legislature’s extension of the Board’s responsibilities to include jurisdiction over matters arising under IHSSEERA.

**Section 32635** provides for the appeal of dismissals of unfair practice charges. The proposed changes do not make any changes to the text of this section, but only update the authority and reference citations. This update is necessary to reflect the Legislature’s extension of the Board’s responsibilities to include jurisdiction over matters arising under IHSSEERA.

**Section 32640** concerns the issuance of complaints in unfair practice charge cases. The proposed changes do not make any changes to the text of this section, but only update the

authority and reference citations. This update is necessary to reflect the Legislature's extension of the Board's responsibilities to include jurisdiction over matters arising under IHSSEERA.

**Section 32644** provides for the filing of an answer in unfair practice charges where a complaint issues. The proposed changes do not make any changes to the text of this section, but only update the authority and reference citations. This update is necessary to reflect the Legislature's extension of the Board's responsibilities to include jurisdiction over matters arising under IHSSEERA.

**Section 32645** concerns non-prejudicial errors in unfair practice charges and related documents. The proposed changes do not make any changes to the text of this section, but only update the authority and reference citations. This update is necessary to reflect the Legislature's extension of the Board's responsibilities to include jurisdiction over matters arising under IHSSEERA.

**Section 32647** concerns amendments to complaints in unfair practice charge cases before hearing. The proposed changes do not make any changes to the text of this section, but only update the authority and reference citations. This update is necessary to reflect the Legislature's extension of the Board's responsibilities to include jurisdiction over matters arising under IHSSEERA.

**Section 32648** concerns amendments to complaints in unfair practice charge cases during a hearing. The proposed changes do not make any changes to the text of this section, but only update the authority and reference citations. This update is necessary to reflect the Legislature's extension of the Board's responsibilities to include jurisdiction over matters arising under IHSSEERA.

**Section 32649** concerns the filing of answers to amendments to complaints in unfair practice charge cases. The proposed changes do not make any changes to the text of this section, but only update the authority and reference citations. This update is necessary to reflect the Legislature's extension of the Board's responsibilities to include jurisdiction over matters arising under IHSSEERA.

**Section 32650** concerns the conduct of informal settlement conferences in unfair practice charge cases. The proposed changes do not make any changes to the text of this section, but only update the authority and reference citations. This update is necessary to reflect the Legislature's extension of the Board's responsibilities to include jurisdiction over matters arising under IHSSEERA.

**Section 32680** concerns the conduct of hearings on unfair practice charges. The proposed changes do not make any changes to the text of this section, but only update the authority and reference citations. This update is necessary to reflect the Legislature's extension of the Board's responsibilities to include jurisdiction over matters arising under IHSSEERA.

**Section 32690** concerns notice of hearing in unfair practice charge cases. The proposed changes do not make any changes to the text of this section, but only update the authority and reference citations. This update is necessary to reflect the Legislature's extension of the Board's responsibilities to include jurisdiction over matters arising under IHSSEERA.

**Section 32722** concerns the creation of ballots in representation matters. The proposed changes do not make any changes to the text of this section, but only update the authority and reference citations. This update is necessary to reflect the Legislature's extension of the Board's responsibilities to include jurisdiction over matters arising under IHSSEERA.

**Section 32726** concerns the employer's obligation to file a voter list with PERB. The proposed changes do not make any changes to the text of this section, but only update the authority and reference citations. This update is necessary to reflect the Legislature's extension of the Board's responsibilities to include jurisdiction over matters arising under IHSSEERA.

**Section 32728** concerns the requirements for an employee to be eligible to vote in an election. The proposed changes do not make any changes to the text of this section, but only update the authority and reference citations. This update is necessary to reflect the Legislature's extension of the Board's responsibilities to include jurisdiction over matters arising under IHSSEERA.

**Section 32730** concerns the parties' right to station observers at an election. The proposed changes do not make any changes to the text of this section, but only update the authority and reference citations. This update is necessary to reflect the Legislature's extension of the Board's responsibilities to include jurisdiction over matters arising under IHSSEERA.

**Section 32732** concerns the power to challenge the eligibility of a voter. The proposed changes do not make any changes to the text of this section, but only update the authority and reference citations. This update is necessary to reflect the Legislature's extension of the Board's responsibilities to include jurisdiction over matters arising under IHSSEERA.

**Section 32734** concerns the parties' right to station an authorized agent at the ballot count. The proposed changes do not make any changes to the text of this section, but only update the authority and reference citations. This update is necessary to reflect the Legislature's extension of the Board's responsibilities to include jurisdiction over matters arising under IHSSEERA.

**Section 32735** concerns the resolution of challenged ballots. The proposed changes do not make any changes to the text of this section, but only update the authority and reference citations. This update is necessary to reflect the Legislature's extension of the Board's responsibilities to include jurisdiction over matters arising under IHSSEERA.

**Section 32736** provides for a runoff election in the event a valid election does not result in any of the choices receiving a majority of the valid votes cast. The proposed changes do not make any changes to the text of this section, but only update the authority and reference citations.

This update is necessary to reflect the Legislature's extension of the Board's responsibilities to include jurisdiction over matters arising under IHSSEERA.

**Section 32738** concerns the parties' ability to object to the conduct of an election. The proposed changes do not make any changes to the text of this section, but only update the authority and reference citations. This update is necessary to reflect the Legislature's extension of the Board's responsibilities to include jurisdiction over matters arising under IHSSEERA.

**Section 32739** concerns a Board agent's powers and duties concerning objections to the conduct of an election. The proposed changes do not make any changes to the text of this section, but only update the authority and reference citations. This update is necessary to reflect the Legislature's extension of the Board's responsibilities to include jurisdiction over matters arising under IHSSEERA.

**Section 32740** provides for a party's ability to withdraw any objections to the conduct of an election. The proposed changes do not make any changes to the text of this section, but only update the authority and reference citations. This update is necessary to reflect the Legislature's extension of the Board's responsibilities to include jurisdiction over matters arising under IHSSEERA.

**Section 32742** provides for the hearing procedures to be used to resolve any objections or challenges. The proposed changes do not make any changes to the text of this section, but only update the authority and reference citations. This update is necessary to reflect the Legislature's extension of the Board's responsibilities to include jurisdiction over matters arising under IHSSEERA.

**Section 32744** provides the procedure in which a party may file exceptions to a Board agent's proposed decision on objections to the conduct of an election or challenged ballots. The proposed changes do not make any changes to the text of this section, but only update the authority and reference citations. This update is necessary to reflect the Legislature's extension of the Board's responsibilities to include jurisdiction over matters arising under IHSSEERA.

**Section 32746** concerns the revised tally of ballots following a ruling on challenged ballots. The proposed changes do not make any changes to the text of this section, but only update the authority and reference citations. This update is necessary to reflect the Legislature's extension of the Board's responsibilities to include jurisdiction over matters arising under IHSSEERA.

**Section 32748** permits any party to file objections to a revised tally of ballots. The proposed changes do not make any changes to the text of this section, but only update the authority and reference citations. This update is necessary to reflect the Legislature's extension of the Board's responsibilities to include jurisdiction over matters arising under IHSSEERA.

**Section 32750** concerns the certification of results of an election or certification of the exclusive representative. The proposed changes do not make any changes to the text of this section, but only update the authority and reference citations. This update is necessary to reflect the Legislature's extension of the Board's responsibilities to include jurisdiction over matters arising under IHSSEERA.

**Section 32752** concerns when the Board may stay an election pending the resolution of an unfair practice charge relating to the voting unit. The proposed changes do not make any changes to the text of this section, but only update the authority and reference citations. This update is necessary to reflect the Legislature's extension of the Board's responsibilities to include jurisdiction over matters arising under IHSSEERA.

**Section 32761** provides for the filing of petitions by employee organizations requesting amendment of certification. The proposed changes do not make any changes to the text of this section, but only update the authority and reference citations. This update is necessary to reflect the Legislature's extension of the Board's responsibilities to include jurisdiction over matters arising under IHSSEERA.

**Section 32762** concerns an employer's response to a petition for amendment of certification. The proposed changes do not make any changes to the text of this section, but only update the authority and reference citations. This update is necessary to reflect the Legislature's extension of the Board's responsibilities to include jurisdiction over matters arising under IHSSEERA.

**Section 32763** concerns the Board's investigation following receipt of a petition for amendment of certification. The proposed changes do not make any changes to the text of this section, but only update the authority and reference citations. This update is necessary to reflect the Legislature's extension of the Board's responsibilities to include jurisdiction over matters arising under IHSSEERA.

**Section 32770** provides for the filing of decertification petitions. The proposed changes do not make any changes to the text of this section, but only update the authority and reference citations. This update is necessary to reflect the Legislature's extension of the Board's responsibilities to include jurisdiction over matters arising under IHSSEERA.

**Section 32774** provides the process by which the Board will determine proof of support. The proposed changes do not make any changes to the text of this section, but only update the authority and reference citations. This update is necessary to reflect the Legislature's extension of the Board's responsibilities to include jurisdiction over matters arising under IHSSEERA.

**Section 32980** provides for the enforcement of compliance with final decisions of the Board. The proposed changes do not make any changes to the text of this section, but only update the authority and reference citations. This update is necessary to reflect the Legislature's extension of the Board's responsibilities to include jurisdiction over matters arising under IHSSEERA.

**Section 32990** defines the term “agency fee” for purposes of these regulations and identifies the statutory provisions establishing agency fee under PERB’s jurisdiction. The proposed changes do not make any changes to the text of this section, but only update the authority and reference citations. This update is necessary to reflect the Legislature’s extension of the Board’s responsibilities to include jurisdiction over matters arising under IHSSEERA.

**Section 32992** describes the requirements for notification to nonmembers regarding “agency fee.” The proposed changes do not make any changes to the text of this section, but only update the authority and reference citations. This update is necessary to reflect the Legislature’s extension of the Board’s responsibilities to include jurisdiction over matters arising under IHSSEERA.

**Section 32993** describes the exclusive representative’s obligation to administer an objection procedure regarding an agency fee. The proposed changes do not make any changes to the text of this section, but only update the authority and reference citations. This update is necessary to reflect the Legislature’s extension of the Board’s responsibilities to include jurisdiction over matters arising under IHSSEERA.

**Section 32994** describes the process by which an agency fee payer may challenge the exclusive representative’s determination of the chargeable expenditures contained in the agency fee amount. The proposed changes do not make any changes to the text of this section, but only update the authority and reference citations. This update is necessary to reflect the Legislature’s extension of the Board’s responsibilities to include jurisdiction over matters arising under IHSSEERA.

**Section 32995** describes the requirements concerning the escrow of agency fee amounts that are in dispute. The proposed changes do not make any changes to the text of this section, but only update the authority and reference citations. This update is necessary to reflect the Legislature’s extension of the Board’s responsibilities to include jurisdiction over matters arising under IHSSEERA.

**Section 32996** provides for the filing of Agency Fee Appeals Procedures by exclusive representatives that receive agency fees. The proposed changes do not make any changes to the text of this section, but only update the authority and reference citations. This update is necessary to reflect the Legislature’s extension of the Board’s responsibilities to include jurisdiction over matters arising under IHSSEERA.

**Section 32997** provides that violation of Sections 32990 through 32996 is an unfair practice. The proposed changes do not make any changes to the text of this section, but only update the authority and reference citations. This update is necessary to reflect the Legislature’s extension of the Board’s responsibilities to include jurisdiction over matters arising under IHSSEERA.

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

PERB did not rely upon any technical, theoretical, or empirical studies, report or documents in proposing the adoption of these regulations.

## **ECONOMIC IMPACT ASSESSMENT**

Current PERB regulations implement the Board's jurisdiction over IHSSEERA only through temporary emergency regulations that will expire on June 5, 2014 without further action by PERB. The emergency regulations extend the scope of existing regulations to matters arising under IHSSEERA and add new procedures for the filing of representation petitions and unfair practice charges under IHSSEERA. The proposed regulations will ensure that the procedural and substantive rights of IHSS providers, employee organizations, and the Statewide Authority created under IHSSEERA remain protected by making the existing emergency regulations permanent.

### The Creation or Elimination of Jobs Within the State of California

IHSSEERA governs the collective bargaining rights of IHSS providers, employee organizations that represent IHSS providers, and the Statewide Authority. IHSSEERA states that on the county implementation date, IHSS providers will become employees of the Statewide Authority for purposes of collective bargaining. Currently, IHSS providers are employees of a local public entity and are subject to the jurisdiction of the MMBA. The proposed regulations simply facilitate IHSS providers' procedural and jurisdictional transfer from employees under the MMBA to employees under IHSSEERA. Accordingly, PERB has determined that the proposed regulations will not have an impact on the creation or elimination of jobs in the State of California.

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

IHSSEERA sets forth the rights of entities and individuals operating in the public sector. The Statewide Authority is a public entity. IHSS providers are public employees for purposes of collective bargaining. Accordingly, PERB has determined that the proposed regulations will not create new businesses or eliminate existing businesses within the State of California.

### Expansion of Businesses or Elimination of Existing Businesses Within the State of California

IHSSEERA sets forth the rights of entities and individuals operating in the public sector. The Statewide Authority is a public entity. IHSS providers are public employees for purposes of collective bargaining. Accordingly, PERB has determined that the proposed regulations will not lead to the expansion or elimination of existing businesses within the State of California.

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

The proposed regulations will ensure that the procedural and substantive rights of IHSS providers, employee organizations, and the Statewide Authority created under IHSSEERA remain protected by making the existing emergency regulations permanent. In so doing, California residents' welfare will receive the benefit of stable collective bargaining and dispute resolution, which translates to continuous delivery of the essential services that IHSS providers provide to California communities.

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

IHSSEERA sets forth the rights and obligations of entities and individuals operating in the public sector. The Statewide Authority, a public entity, is the employer for purposes of collective bargaining under IHSSEERA. After the county implementation date, IHSS providers will become employees of the Statewide Authority for purposes of collective bargaining. Based on the limitation of IHSSEERA's scope to actors in the public sector, PERB has initially determined that the proposed regulatory action will not have a significant adverse economic impact on business.

**REASONABLE ALTERNATIVES TO THE PROPOSED REGULATORY ACTION AND THE BOARD'S REASONS FOR REJECTING THOSE ALTERNATIVES**

Alternative: Where PERB requires notice to be posted pursuant to IHSSEERA, PERB shall determine the appropriate manner of posting on a case-by-case basis after taking into account input from all of the parties.

Analysis: The alternative recognizes the unique circumstances of IHSS providers in that they do not report to a central workplace with an employee bulletin board where notice can be physically posted. This alternative grants PERB the flexibility to determine the appropriate manner of notice posting on a case-by-case basis to fit the needs of the parties. However, a regulation that requires PERB to determine the appropriate manner of posting on a case-by-case basis will create confusion among the parties regarding their rights and obligations. Furthermore, a regulation that requires PERB to consider input from the parties prior to determining the appropriate manner of posting will create unnecessary delay in representation proceedings and negatively impact the rights of employees and employee organizations. In representation proceedings, it is imperative that notice of a pending petition or election be posted quickly so that the matter may proceed to resolution.

Alternative: An employee or employee organization's violation of the employer's rule or regulation will not constitute an unfair practice

Analysis: This alternative is based on the assertion that IHSSEERA does not contain specific statutory language that makes a violation of the employer's rule or regulation an unfair

practice. However, adopting this alternative will severely impact the rights of employees, employee organizations, and the employer itself. IHSSEERA states that it shall be an unfair practice for the employer to adopt a rule or regulation that is inconsistent with IHSSEERA itself. This prohibition would be meaningless if the employer or exclusive representative could negotiate a rule or regulation that is consistent with IHSSEERA, but then violate that rule. If a violation of the rule or regulation is not itself an unfair practice, the affected employee, employee organization, or employer would have no recourse to challenge the violation except to engage in any available internal process or more likely in lengthy and time-consuming litigation in Superior Court. Providing that a violation of a rule or regulation will be processed as an unfair labor practice provides the aggrieved party an avenue for administrative relief before PERB, which will provide a timely and efficient resolution to the dispute.

Adoption of the above alternative is also inconsistent with PERB's treatment of similar conduct in parallel labor relations statutes. IHSS providers are governed by the MMBA until the county implementation date, at which time they will be governed by IHSSEERA. The MMBA treats an employer or employee organization's violation of the employer's local rule as an unfair practice. PERB sees no reason to believe that the Legislature intended to discard any of the "unfair practice" provisions of the MMBA and its implementing regulations, under which employees, employee organizations, and employers have been functioning for years. Based on the broad rulemaking authority granted to PERB as the expert labor relations agency with the initial exclusive jurisdiction to interpret and administer public sector labor laws, IHSSEERA may be reasonably construed to include the right to file an unfair practice charge over an alleged violation of a rule or regulation adopted by the employer.

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

PERB has not identified any alternatives that would lessen any adverse impact on small business and has not identified any adverse impacts on small businesses as a result of these proposed regulations.

#### **MANDATED USE OF SPECIFIC TECHNOLOGIES OR EQUIPMENT**

PERB's proposed regulations do not mandate the use of any specific technologies or equipment.