

INITIAL STATEMENT OF REASONS

The changes proposed to the regulations of the Public Employment Relations Board (PERB or Board) are intended to reflect the transfer of State Mediation and Conciliation Service (SMCS) from the Department of Industrial Relations (DIR) to PERB pursuant to Senate Bill 1038 (Chapter 46, Statutes 2012).

In part, Senate Bill 1038 provides, at Government Code section 3603(c), that “The regulations of the Director of Industrial Relations at Subchapter 2.2 (Sections 15800 to 15875.1, inclusive) and Subchapter 7 (Section 17300) of Chapter 8 of Division 1 of Title 8 of the California Code of Regulations shall remain in effect and shall be deemed to be regulations of the Public Employment Relations Board.” The regulations identified in Government Code section 3603(c) address, respectively, representation procedures for those transit districts that are not subject to the Meyers-Milias-Brown Act (MMBA), and the current reimbursement for services policy of SMCS.

These proposed changes include amendments to the DIR regulations referenced above. The effort is aimed at revisions necessary simply to reflect the transfer of responsibility from DIR and the DIR Director to PERB and to update/correct statutory references. The only substantive change proposed, other than those required by enactment of Senate Bill 1038, concerns the elimination of charges by SMCS for the conduct of representation (certification, decertification, etc.) elections, card check procedures, and agency shop elections. In addition, two new regulation sections are proposed to provide necessary definitions within PERB’s regulations, and amendments to a few existing regulations are proposed to reflect the addition of SMCS to PERB (and to distinguish mediators from other Board agents, where appropriate).

Section by Section

Proposed Section 32056 would provide necessary SMCS definitions of “service,” “SMCS” or “Division of Mediation” as well as “Supervisor” within PERB’s regulations.

Section 32100 establishes the application of PERB regulations. The only change proposed, other than the updating of authority and reference citations, is the addition of subsection (f) limiting the applicability of the PERB regulations to mediation, election and other services provided by mediators or conciliators except as expressly provided.

Proposed Section 32121 would identify the appropriate location for filing documents with the SMCS.

Section 32150 sets forth the requirements related to issuance of subpoenas. The only change proposed, other than the updating of authority and reference citations, is the modification of subsection (e) to expand the definition of “Board agent” to include a mediator or conciliator employed within SMCS and to limit the applicability of the regulation so as not to apply when a mediator or conciliator is performing services pursuant to Government Code 3601.

Section 32155 addresses the disqualification of Board agents and Board members. The only change proposed, other than the updating of authority and reference citations, is the

modification of subsection (a) expanding the applicability of the regulation to encompass SMCS mediators and conciliators.

Section 32300 addresses exceptions to a Board agent's decision. The only change proposed is the updating of authority and reference citations.

Section 32305 addresses when proposed decisions become final. The only change proposed is the updating of authority and reference citations.

Section 32310 provides the procedure for responding to exceptions. The only change proposed is the updating of authority and reference citations.

Section 32315 provides for circumstances when the Board may order the taking of testimony by deposition. The only change proposed is the updating of authority and reference citations.

Section 32320 concerns decisions issued by the Board itself. The only change proposed is the updating of authority and reference citations.

Section 32350 provides the definition of "administrative decision." The only change proposed is the updating of authority and reference citations.

Section 32360 provides the requirements for an appeal. The only change proposed is the updating of authority and reference citations.

Section 32370 concerns requests for stay of activity. The only change proposed is the updating of authority and reference citations.

Section 32375 addresses the filing of a response to an administrative appeal. The only change proposed is the updating of authority and reference citations.

Section 32380 provides the limitations of filing an appeal. The only change proposed is the updating of authority and reference citations.

Section 32410 addresses requests for reconsideration. The only change proposed is the updating of authority and reference citations.

Existing Section 17300 (renumbered as Section 32998), consistent with Government Code section 3602 (and former Labor Code section 67), provides for reimbursement to SMCS for election services (including card check procedures), arbitration-related services, and training and facilitation services, as well as hearing officer services in resolving representation disputes under various public transit acts. The proposed amendments to this renumbered section would leave intact the reimbursement policy for all of these services except election work. Less than one-third of the revenue realized over the first two fiscal years this policy has been in effect has come from election work.

The proposed amendments would eliminate the “fee for service” for card check procedures and elections that resolve questions of representation. Such issues are integral to maintaining the integrity of the labor-management relationship. While this change would shift costs to PERB’s budget, there would be an offsetting savings for affected public agencies and the employee organizations representing or seeking to represent public employees. This change would also eliminate any question of election costs having to be borne by individual employees who exercise their right, as a group, to seek to decertify their exclusive representative or rescind an agency shop fee. Charging for elections (costs are normally split between the agency and the employee organization) also disadvantages employee groups that are newly established and may not have the funds to share the cost of an election. In general, this change would reinforce the neutral role of the SMCS and PERB in administering representation procedures.

It is important to note that neutral labor agencies in other states do not charge for election services, even in states where they charge for other services. Likewise, PERB itself does not charge for election services. Since SMCS is now a division of PERB, this change is also necessary to avoid a conflict with respect to how elections are conducted within PERB. This change will also facilitate the integration of SMCS into PERB and provide for cross-utilization of mediators and other PERB staff for similar work such as election services.

Existing Section 15800 (renumbered as Section 93000) provides definitions applicable under specified transit district acts and laws. The proposed changes would remove the definition of “Director” and “Service” from the regulation, move Section 15800 from Title 8, Division 1, Chapter 8, Subchapter 2.2 and renumber and amend the section to update authority and reference citations to reflect the transfer of SMCS from DIR to PERB (Chapter 46, Statutes 2012). The proposed changes would also eliminate reference to the DIR Director and replace the reference with “Supervisor” to reflect the transfer of responsibility from the DIR Director to PERB, eliminate the definition of “service” in this section, and update other statutory references in the text.

Existing Section 15805 (renumbered as Section 93005) concerns the process for filing a petition for certification. The proposed changes would update the location for filing a petition with SMCS to reflect the content of proposed regulation 32121, correct a typographical error in subsection (b), and remove reference to the service in subsection (c). The proposed changes are necessary to move Section 15805 from Title 8, Division 1, Chapter 8, Subchapter 2.2 and renumber and amend the section to reflect the transfer of SMCS from DIR to PERB, to provide more clarity and efficiency in the Board’s processes, and to update/correct statutory references. (Chapter 46, Statutes 2012.)

Existing Section 15810 (renumbered as Section 93010) identifies the form of a petition for certification. The proposed changes would eliminate the need for five copies of a petition in subsection (a) and in subsection (n) confirm the service and obligations to the petitioner consistent with current PERB regulations. The proposed changes are necessary to move Section 15810 from Title 8, Division 1, Chapter 2.2 and renumber and amend the section to reflect the transfer of SMCS from DIR to PERB, to provide more clarity and efficiency in the Board’s processes and to update/correct statutory references. (Chapter 46, Statutes 2012.)

Existing Section 15815 (renumbered as Section 93015) identifies the percentage of valid authorizations required to determine the existence of a representation dispute. The proposed changes would clarify the requirement that authorizations be signed by the employee in subsection (a), and replaces the reference to the service with SMCS in subsections (b) and (c). The proposed changes are necessary to move Section 15815 from Title 8, Division 1, Chapter 8, Subchapter 2.2 and renumber and amend the section to reflect the transfer of SMCS from DIR to PERB, to provide more clarity and efficiency in the Board's processes and to update/correct statutory references. (Chapter 46, Statutes 2012.)

Existing Section 15820 (renumbered as Section 93020) provides for the use of consent election agreements. The proposed changes make clarifying and stylistic changes. The proposed changes are necessary to move Section 15820 from Title 8, Division 1, Chapter 8, Subchapter 2.2 and renumber and amend the section to reflect the transfer of SMCS from DIR to PERB, to provide more clarity and efficiency in the Board's processes and to update/correct statutory references. (Chapter 46, Statutes 2012.)

Existing Section 15825 (renumbered as Section 93025) provides for an investigation of a petition by service. In subsection (a), the proposed changes replace the references to the "service" with "SMCS" or "Supervisor," eliminates the requirement that a copy of the petition be served with the notice of hearing, and clarifies the timeframe by when a notice of hearing may be amended or withdrawn by the Supervisor. In subsection (b), the proposed changes update references to PERB regulations, replace the references to the "service" with "Supervisor," eliminate the need for approval from the DIR Director, eliminate the need for a copy of the petition to be served with the notice of hearing, and eliminate reference to the finality of the Director's decision. In subsection (c), the proposed changes update references to PERB regulations, replace the references to the "service" with "Supervisor," and eliminate the requirement for the approval of the Director. The proposed changes also include the addition of subsection (d) identifying the ability to appeal any determination made by the Supervisor to the PERB Board in accordance with existing PERB regulations. The proposed changes are necessary to move Section 15825 from Title 8, Division 1, Chapter 8, Subchapter 2.2 and renumber and amend the section to reflect the transfer of SMCS from DIR to PERB, to provide more clarity and efficiency in the Board's processes and to update/correct statutory references. (Chapter 46, Statutes 2012.)

Existing Section 15830 (renumbered as Section 93030) concerns the conduct of hearings concerning a petition for certification. In subsection (a), the proposed change replaces reference to the "Director" with "Board," replaces reference to the "service" with "SMCS, the Supervisor, the hearing officer," and replaces references to the prior transit district acts and laws with Section 93000. In subsection (b), the proposed change adds the words "or her" to convey gender neutrality. In subsection (c), the proposed changes update references to the newly proposed section numbers, correct a typographical error, clarify that written motions are to be filed with the hearing officer, eliminate the additional procedure for motions made prior to hearing, and clarify the process by which hearing officers rule on motions. The proposed changes are necessary to move Section 15830 from Title 8, Division 1, Chapter 8, Subchapter 2.2 and renumber and amend the section to reflect the transfer of SMCS from DIR to PERB, to

provide more clarity and efficiency in the Board's processes and to update/correct statutory references. (Chapter 46, Statutes 2012.)

Existing Section 15835 (renumbered as Section 93035) provides the process for intervention. The proposed changes remove reference to the "service," restructure sentences for gender neutrality, and correct a typographical error. The proposed changes are necessary to move Section 15835 from Title 8, Division 1, Chapter 8, Subchapter 2.2 and renumber and amend the section to reflect the transfer of SMCS from DIR to PERB, to provide more clarity and efficiency in the Board's processes and to update/correct statutory references. (Chapter 46, Statutes 2012.)

Existing Section 15840 (renumbered as Section 93040) identifies the rights and duties of parties at hearing. In subsection (c), the proposed changes include replacing the term "Rulings" with "Interlocutory rulings," and removing the ability to appeal the rulings to the DIR Director. In subsection (d), the term "stenographic report" is replaced by "transcript," and in subsection (f) a typographical error is fixed. The proposed changes are necessary to move Section 15840 from Title 8, Division 1, Chapter 8, Subchapter 2.2 and renumber and amend the section to reflect the transfer of SMCS from DIR to PERB, to provide more clarity and efficiency in the Board's processes and to update/correct statutory references. (Chapter 46, Statutes 2012.)

Existing Section 15845 (renumbered as Section 93045) identifies the application process for subpoenas. The proposed changes replace reference to the "service" with "Supervisor" or "the hearing officer," make non-substantive stylistic changes, and clarify the role of the hearing officer. The proposed changes are necessary to move Section 15845 from Title 8, Division 1, Chapter 8, Subchapter 2.2 and renumber and amend the section to reflect the transfer of SMCS from DIR to PERB, to provide more clarity and efficiency in the Board's processes and to update/correct statutory references. (Chapter 46, Statutes 2012.)

Existing Section 15850 (renumbered as Section 93050) concerns post-hearing briefing. The only changes proposed are the updating of authority and reference citations. The proposed changes are necessary to move Section 15850 from Title 8, Division 1, Chapter 8, Subchapter 2.2 and renumber and amend the section to update/correct statutory references. (Chapter 46, Statutes 2012.)

Existing Section 15855 (renumbered as Section 93055) identifies the duties of a hearing officer following a hearing. The proposed changes restructure sentences for gender neutrality and style, replace "stenographic report" with "transcript," replace "director" with "Supervisor," eliminate review of the hearing by the Director, and update the appeal process pursuant to Section 93060. The proposed changes are necessary to move Section 15855 from Title 8, Division 1, Chapter 8, Subchapter 2.2 and renumber and amend the section to reflect the transfer of SMCS from DIR to PERB, to provide more clarity and efficiency in the Board's processes and to update/correct statutory references. (Chapter 46, Statutes 2012.)

Existing Section 15860 (renumbered as Section 93060) identifies the process for filing exceptions. The proposed changes replace the current procedure for filing exceptions and

replace it incorporating reference to the existing Section 32300. The proposed changes are necessary to move Section 15860 from Title 8, Division 1, Chapter 8, Subchapter 2.2 and renumber and amend the section to reflect the transfer of SMCS from DIR to PERB, to provide more clarity and efficiency in the Board's processes and to update/correct statutory references. (Chapter 46, Statutes 2012.)

Existing Section 15865 (renumbered as Section 93065) concerns the determination of whether an election should be held. The proposed changes replace the procedure for issuing a determination and replace it with incorporation of reference to Sections 32300 through 32320, and 32400 and 32410. The proposed changes also restructure the remaining sentences to stylistically conform to the replacement of the procedure language, and replace "Director" with "Board." The proposed changes are necessary to move Section 15865 from Title 8, Division 1, Chapter 8, Subchapter 2.2 and renumber and amend the section to reflect the transfer of SMCS from DIR to PERB, to provide more clarity and efficiency in the Board's processes and to update/correct statutory references. (Chapter 46, Statutes 2012.)

Existing Section 15870 (renumbered as Section 93070) identifies the procedures for conducting an election. In subsections (a), (b), (d), (e) and (f), the proposed changes replace reference to the "service" with "SMCS," replace reference to "director" with "Supervisor," make stylistic changes, and update cross-references. In subsection (c), the proposed changes replace reference to the "service" with "Supervisor," make stylistic changes, and eliminate the requirement that the Director prepare a report on challenged ballots, objections, or both. The proposed changes are necessary to move Section 15870 from Title 8, Division 1, Chapter 8, Subchapter 2.2 and renumber and amend the section to reflect the transfer of SMCS from DIR to PERB, to provide more clarity and efficiency in the Board's processes and to update/correct statutory references. (Chapter 46, Statutes 2012.)

Existing Section 15875 (renumbered as Section 93075) identifies the procedures for conducting a runoff election. The proposed changes replace reference to the "service" with "SMCS," replace "director" with "Supervisor," update reference citations, and make stylistic changes. The proposed changes are necessary to move Section 15875 from Title 8, Division 1, Chapter 8, Subchapter 2.2 and renumber and amend the section to reflect the transfer of SMCS from DIR to PERB, to provide more clarity and efficiency in the Board's processes and to update/correct statutory references. (Chapter 46, Statutes 2012.)

Existing Section 15875.1 (renumbered as Section 93080) provides for the application of relevant federal law in resolving questions of representation. The proposed change replaces "Director" with "Board" and updates the authority and reference citations. The proposed changes are necessary to move Section 15875.1 from Title 8, Division 1, Chapter 8, Subchapter 2.2 and renumber and amend the section to reflect the transfer of SMCS from DIR to PERB, to provide more clarity and efficiency in the Board's processes and to update/correct statutory references. (Chapter 46, Statutes 2012.)

ANTICIPATED BENEFITS OF THE PROPOSED REGULATIONS

These regulations and changes will improve the public sector labor environment and the collective bargaining process by clarifying PERB procedures, making the Board's processes more transparent and accessible, and updating regulations consistent with current law. The changes will also reinforce the neutrality of PERB and SMCS procedures and result in some minor cost savings for local government agencies.

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.

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

Other than PERB's budget and SMCS's budget reports for the prior two years, PERB did not rely upon any other technical, theoretical, or empirical studies, report or documents in proposing the adoption of these regulations. The adoption of the proposed amendments and sections will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses or create or expand businesses in the State of California. The adoption of the proposed amendment will benefit public employers, employees, employees' representatives and the community at-large by further facilitating the resolution of public sector labor disputes by clarifying PERB procedures, making the Board's processes more transparent and accessible, and eliminating redundant procedures. 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 these employers and employees provide to California communities. PERB will continue to investigate the potential for economic impact through this rulemaking process.

MANDATED USE OF SPECIFIC TECHNOLOGIES OR EQUIPMENT

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