

INITIAL STATEMENT OF REASONS

The changes proposed to the regulations of the Public Employment Relations Board (PERB or Board) are intended, in general, to provide more clarity and more transparency in the Board's processes, and to make PERB's procedures more accessible to affected members of the public.

The Board proposes the adoption of regulations providing for and describing the election services and processes related thereto for representation and agency shop elections conducted by PERB's Division of Mediation (SMCS) pursuant to the local rules of a Meyers-Milias-Brown Act (MMBA), Trial Court Employment Protection and Governance Act (Trial Court Act) or Trial Court Interpreter Employment and Labor Relations Act (Court Interpreter Act) employer. These proposed regulations define "Parties," describe ballots, and provide for stays of an election, notice requirements, voter list requirements, voter eligibility requirements, challenged ballot processes, tallying of ballots, resolution of challenges, objection processes, hearings on objections and challenges, and filing of exceptions to decisions on objections and challenges. Intending to fully effectuate the transfer of SMCS from the Department of Industrial Relations to PERB, PERB is proposing these election regulations to make clear the processes, procedures, rights, and responsibilities of parties to such actions.

Section by Section

Proposed Section 32999 would provide that the provisions of new Article 2 of Chapter 1, Subchapter 9, are applicable whenever SMCS conducts representation and agency shop elections pursuant to the local rules of an MMBA, Trial Court Act or Court Interpreter Act employer. This proposed section would also provide that such elections would be conducted by SMCS only pursuant to a Consent Election Agreement. The necessity and intent of this proposed section is to provide clarity regarding the election services provided by SMCS. This proposed section is needed to define when the provisions of proposed Article 2 are applicable, as they are not always so. This proposed section is needed to define the term "Consent Election Agreement" so that parties know when this Article applies. This section is also necessary for consistency with existing PERB Regulation 32724, which similarly provides for PERB to conduct elections pursuant to a Consent Election Agreement.

Proposed Section 33000 would mandate that all elections pursuant to this Article would be conducted by secret ballot and describes the substance of ballots. This proposed section is necessary because it describes ballot mechanics to interested parties. This proposed section provides how ballots will be prepared and how the order of voting choices may be determined. This section is necessary because it mandates that, except in the case of a runoff election, either "No Organization" or "No Representation" shall appear on each ballot in a representation election. This section is also necessary for consistency with existing PERB Regulation 32722, which similarly outlines election ballots for elections conducted by PERB.

Proposed Section 33001 would define "Parties" for the purposes of this Article. This proposed section is needed to provide definition to a word used throughout these proposed regulations. This section is also necessary for consistency with existing PERB Regulation 32721, which similarly defines parties subject to an election conducted by PERB.

Proposed Section 33002 would provide that a party to an SMCS-conducted election may request that the Board stay an election and describes the process thereof. This proposed section is intended to effectuate PERB's policies and allow for timely resolution of allegations of unlawful conduct. This proposed section would also provide for the appealability to the Board itself of a determination to stay an election. This proposed section is necessary because it informs parties of the stay of election procedure and what steps a party needs to take in order to utilize that procedure. This proposed section informs parties that a determination to stay an election may be appealed to the Board itself. This section is also necessary for consistency with existing PERB Regulation 32752, which similarly provides for a party to request to stay an election conducted by PERB.

Proposed Section 33003 would describe the SMCS-provided notice of election and posting requirements thereof. This proposed section is necessary because it describes the process by which a notice of election shall follow. This proposed section is necessary because it mandates requirements of a notice of an election; e.g., by way of this proposed section it is clear that a notice of election will include a sample ballot, a description of the voting unit, and information concerning the balloting process. This proposed section is also necessary in that it mandates that the employer, unless otherwise agreed by the parties, shall post the notice which shall remain posted through the final day for casting ballots. This proposed section is needed to ensure that eligible voters are aware of the election by way of the mandated posted notice(s) of election. This section is also necessary for consistency with existing PERB Regulation 32724, which similarly provides for PERB to issue a Notice of Election in an election PERB conducts.

Proposed Section 33004 would provide for the employer to submit a list of eligible voters. This proposed section would also provide for service requirements of the list of voters and require that addresses of voters be confidential and not distributed to any other organization or individual nor utilized for any other purpose. This proposed section is needed so that SMCS is provided with a list of eligible employees to an election and to ensure that SMCS receives mailing information so that it can distribute ballots and run the election. This section requires that employee lists are alpha-sorted for efficiency purposes and also that job titles or classifications are included to ensure that each employee is eligible to vote. This section is necessary to ensure that confidentiality and other pertinent laws are considered and followed. This section is also necessary for consistency with existing PERB Regulation 32726, which similarly outlines the list of voters for elections conducted by PERB.

Proposed Section 33005 would provide voter eligibility requirements. This proposed section is needed as it defines voter eligibility for these SMCS-conducted elections. This section is also necessary for consistency with existing PERB Regulation 32728, which similarly outlines voter eligibility for elections conducted by PERB.

Proposed Section 33006 would provide for a process to challenge the eligibility of a voter. This proposed section is needed in order to ensure that a challenge procedure is in place to address voter eligibility. This proposed section is needed to spell out how a challenge may be made depending on the type of election held; e.g., on site or mail ballot. This section is also needed to inform interested persons how challenges may impact the outcome of an election.

This section is also necessary for consistency with existing PERB Regulation 32732, which similarly outlines the process for election challenges elections conducted by PERB.

Proposed Section 33007 would provide for the process by which SMCS tallies ballots and would allow each party to station an authorized agent at the ballot count. The majority of valid votes cast, under this proposed section, would determine the outcome of an election, unless otherwise authorized by statute. This proposed section is needed in order for an election outcome to occur. This proposed section is needed so that parties are aware that, unless otherwise authorized by statute, a majority of the valid votes cast shall determine the outcome of an election. This section provides clarity to the mechanics of elections conducted pursuant to this proposed Article. This section is also necessary for consistency with existing PERB Regulation 32734, which similarly outlines the process for the tally of ballots for elections conducted by PERB.

Proposed Section 33008 would provide for the process by which challenges will be resolved. This proposed section would also provide for the appealability of a Board agent's determination regarding the eligibility of the challenged voter. This proposed section is necessary to give effect to the remainder of the mechanics and processes contained in this proposed Article by describing the Board's authority and procedure to resolve challenges. This section is also necessary for consistency with existing PERB Regulation 32735, which similarly outlines the process by which challenges will be resolved for elections conducted by PERB.

Proposed Section 33009 would allow, within 10 days following the service of the tally of ballots, any party to an election to file objections concerning the conduct of the election. This proposed section would describe the filing requirements for said objections. This proposed section is necessary to give effect to the remainder of the mechanics and processes contained in this proposed Article by providing a process for a party to make objections to the conduct of an election. This section is necessary to effectuate the purpose of SMCS and PERB to promote harmonious labor relations through the resolution of disputes. This section is needed so that the parties are aware of the mechanics of filing objections to election conduct. This section also specifically describes the type of objections that will be entertained by the Board. This section is also necessary for consistency with existing PERB Regulation 32738, which similarly outlines the process for filing objections to the conduct of an election conducted by PERB.

Proposed Section 33010 would provide for the powers and duties of a Board agent concerning election objections; including the power to conduct investigatory conferences and to issue written determinations. This proposed section is necessary to delineate the powers and duties of Board agents concerning election objections. This section is needed to make clear what a Board agent has the power to do when objections are made. This section is also necessary for consistency with existing PERB Regulation 32739, which similarly outlines the powers and duties of a PERB Board agent concerning objections to an election conducted by PERB.

Proposed Section 33011 would provide a party with the ability to withdraw its objections prior to a final decision by the Board. This proposed section is needed to make clear that a party

may withdraw objections prior to final decision. This section provides clarity to the mechanics of elections conducted pursuant to this proposed Article. This section is also necessary for consistency with existing PERB Regulation 32740, which similarly outlines the withdrawal of an objection to an election conducted by PERB.

Proposed Section 33012 would provide that objections that have not been dismissed and unresolved challenges to ballots sufficient in number to affect the outcome of an election may be resolved through the hearing procedures commencing with Section 32165 of PERB's Regulations. This section is necessary to make clear that in the circumstances described therein, objections and/or challenges may be resolved through specific hearing procedures. This section is also necessary for consistency with existing PERB Regulation 32742, which similarly provides for a hearing on objections and/or challenges to elections conducted by PERB.

Proposed Section 33013 would provide for the ability to file exceptions to a Board agent's proposed decision on objections to the conduct of an election or challenged ballots, pursuant to the procedures set forth and commencing with Section 32300 of PERB's Regulations. This section is necessary because it outlines and provides for exceptions to a Board agent's proposed decision on objections or challenged ballots. This section provides clarity to the mechanics of elections conducted pursuant to this proposed Article. This section is also necessary for consistency with existing PERB Regulation 32744, which similarly outlines the ability for a party to file exceptions to a Board agent's proposed decision on objections to the conduct of an election or challenged ballots for elections conducted by PERB.

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, and by making the Board's processes more transparent and accessible. These proposed regulations make clear the rights, duties, and responsibilities of parties involved in SMCS-conducted elections. Additionally, these proposed regulations would provide parties with the ability to appeal Board agent determinations made during or following SMCS-conducted elections-the benefit being the development of precedent to further guide parties and the quick and efficient resolution of pertinent matters.

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

PERB did not rely upon any 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 regulations 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. 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.