

TITLE 8. PUBLIC EMPLOYMENT RELATIONS BOARD

NOTICE OF PROPOSED RULEMAKING

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

REGULATORY ACTION

The Board proposes to designate existing section 32998 as under Article 1 of Subchapter 9, Chapter 1, Division 3, Title 8 and adopt Article 2 to Title 8, Division 3, Chapter 1, Subchapter 9, and to adopt sections 32999, 33000, 33001, 33002, 33003, 33004, 33005, 33006, 33007, 33008, 33009, 33010, 33011, 33012, and 33013.

Proposed Section 32999 describes when the provisions of proposed Article 2 are applicable. Proposed Section 33000 describes ballots as they are to be utilized in elections conducted pursuant to proposed Article 2. Proposed Section 33001 defines "Parties" for the purposes of proposed Article 2. Proposed Section 33002 provides for a stay of election process. Proposed Section 33003 describes the notice of election that the State Mediation and Conciliation Service (SMCS) will provide. Proposed Section 33004 provides for the requirement that a list of voters be submitted by an employer in an election subject to proposed Article 2. Proposed Section 33005 establishes voter eligibility requirements. Proposed Section 33006 provides a process by which a party may challenge the eligibility of a voter. Proposed Section 33007 describes the process of tallying voted ballots. Proposed Section 33008 describes the process by which challenges to ballots are resolved. Proposed Section 33009 provides that any party to an election may file objections to the conduct of elections within a 10-day period. Proposed Section 33010 provides for the powers and duties of a Board agent concerning objections to election conduct. Proposed Section 33011 provides for the withdrawal of objections to an election prior to a final decision by the Board. Proposed Section 33012 provides for the utilization of a hearing on objections and challenges. Proposed Section 33013 provides for the filing of exceptions to a decision on objections or challenges.

PUBLIC HEARING

The Board will hold a public hearing at 10:00 a.m., on June 13, 2013, in Room 103 of its headquarters building, located at 1031 18th Street, Sacramento, California. Room 103 is wheelchair accessible. At the hearing, any person may orally present statements or arguments relevant to the proposed action described in the Informative Digest. It is requested, but not required, that persons making oral comments at the hearing submit a written copy of their testimony at the hearing. Any person wishing to testify at the hearing is requested to notify the Office of the General Counsel as early as possible by calling (916) 322-3198 to permit the orderly scheduling of witnesses and to permit arrangements for an interpreter to be made if necessary.

WRITTEN COMMENT PERIOD

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to the Board. The written comment period closes at 5:00 p.m. on June 11, 2013. Written comments will also be accepted at the public hearing. Submit written comments to:

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Public Employment Relations Board
1031 18th Street
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(916) 327-8387
FAX: (916) 327-6377
E-mail: jlevy@perb.ca.gov

or

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AUTHORITY AND REFERENCE

Pursuant to Government Code section 3541.3(g), the Board is authorized to adopt, amend and repeal rules and regulations to carry out the provisions and effectuate the purposes and policies of the Educational Employment Relations Act (EERA). Pursuant to Government Code sections 3509(a) and 3541.3(g), the Board is authorized to adopt, amend and repeal rules and regulations to carry out the provisions and effectuate the purposes and policies of the Meyers-Miliias-Brown Act (MMBA). Government Code section 3513(h) authorizes the Board to adopt, amend and repeal rules and regulations to carry out the provisions and effectuate the purposes and policies of the Ralph C. Dills Act (Dills Act). Government Code section 3563 authorizes the Board to adopt, amend and repeal rules and regulations to carry out the provisions and effectuate the purposes and policies of the Higher Education Employer-Employee Relations Act (HEERA). Pursuant to Public Utilities Code section 99561(f), the Board is authorized to adopt, amend and repeal rules and regulations to carry out the provisions and effectuate the purposes and policies of the Los Angeles County Metropolitan Transportation Authority Transit Employer-Employee Relations Act (TEERA). Pursuant to Government Code sections 3541.3(g) and 71639.1(b), the Board is authorized to adopt, amend and repeal rules and regulations to carry out the provisions and effectuate the purposes and policies of the Trial Court Governance and Employment Protection Act (Trial Court Act). Pursuant to Government Code sections 3541.3(g) and 71825(b), the Board is authorized to

adopt, amend and repeal rules and regulations to carry out the provisions and effectuate the purposes and policies of the Trial Court Interpreter Employment and Labor Relations Act (Court Interpreter Act). 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.”

General reference for proposed section 32999: Sections 3502.5(b) and (d), 3507.1(c), 71632.5(c), 71636.3, and 71814(c), Government Code. General reference for proposed section 33000: Sections 3502.5(b) and (d), 3507.1(a) and (c), 71632.5(c), 71636.3, and 71814(c), Government Code. General reference for proposed section 33001: Sections 3501, 71601, and 71801, Government Code. General reference for proposed section 33002: Sections 3502.5(b) and (d), 3507.1(c), 71632.5(c), 71636.3, and 71814(c), Government Code. General reference for proposed section 33003: Sections 3502.5(b) and (d), 3507.1(c), 71632.5(c), 71636.3, and 71814(c), Government Code. General reference for proposed section 33004: Sections 3502.5(b) and (d), 3507.1(c), 71632.5(c), 71636.3, and 71814(c), Government Code. General reference for proposed section 33005: Sections 3502.5(b) and (d), 3507.1(c), 71632.5(c), 71636.3, and 71814(c), Government Code. General reference for proposed section 33006: Sections 3502.5(b) and (d), 3507.1(c), 71632.5(c), 71636.3, and 71814(c), Government Code. General reference for proposed section 33007: Sections 3502.5(b) and (d), 3507.1(a) and (c), 71632.5(c), 71636.3, and 71814(c), Government Code. General reference for proposed section 33008: Sections 3502.5(b) and (d), 3507.1(c), 71632.5(c), 71636.3, and 71814(c), Government Code. General reference for proposed section 33009: Sections 3502.5(b) and (d), 3507.1(c), 71632.5(c), 71636.3, and 71814(c), Government Code. General reference for proposed section 33010: Sections 3502.5(b) and (d), 3507.1(c), 71632.5(c), 71636.3, and 71814(c), Government Code. General reference for proposed section 33011: Sections 3502.5(b) and (d), 3507.1(c), 71632.5(c), 71636.3, and 71814(c), Government Code. General reference for proposed section 33012: Reference: Sections 3502.5(b) and (d), 3507.1(c), 71632.5(c), 71636.3, and 71814(c), Government Code. General reference for proposed section 33013: Sections 3502.5(b) and (d), 3507.1(c), 71632.5(c), 71636.3, and 71814(c), Government Code.

POLICY STATEMENT OVERVIEW

PERB is a quasi-judicial agency which oversees public sector collective bargaining in California. PERB presently administers seven collective bargaining statutes, ensures their consistent implementation and application, and adjudicates disputes between the parties subject to them. The statutes administered by PERB are: the Meyers-Milias-Brown Act (MMBA) of 1968, which established collective bargaining for California’s city, county, and local special district employers and employees; the Educational Employment Relations Act (EERA) of 1976 establishing collective bargaining in California’s public schools (K-12) and community colleges; the State Employer-Employee Relations Act of 1978, known as the Ralph C. Dills Act (Dills Act), establishing collective bargaining for state government employees; the Higher Education Employer-Employee Relations Act (HEERA) of 1979 extending the same coverage to the California State University System, the University of California System and Hastings College of Law; the Los Angeles County Metropolitan Transportation Authority Transit

Employer-Employee Relations Act (TEERA) of 2003, which covers supervisory employees of the Los Angeles County Metropolitan Transportation Authority; and the Trial Court Employment Protection and Governance Act (Trial Court Act) of 2000 and the Trial Court Interpreter Employment and Labor Relations Act (Court Interpreter Act) of 2002, which together provide for collective bargaining rights for most trial court employees. PERB also now has jurisdiction over the In-Home Supportive Services Employer-Employee Relations Act of 2012 (IHSSA), which is applicable to certain in-home supportive services providers, but no changes related to the enactment of that new statute are reflected in this rulemaking package.

As explained in more detail below in the Informative Digest, the changes proposed by this Notice address one main area, but also attempt to create a unifying theme of providing more clarity and more transparency in the Board's processes. 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 SMCS pursuant to the local rules of an MMBA, Trial Court Act or 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, challenge processes, tallying of ballots, resolution of challenges, objection processes, hearings on objections and challenges, and filing of exceptions to decisions on objections and challenges.

INFORMATIVE DIGEST

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 intent is to provide clarity regarding the pertinent election services provided by SMCS.

Proposed Section 33000 would mandate that all elections pursuant to this Article would be conducted by secret ballot and describes the substance of ballots.

Proposed Section 33001 would define "Parties" for the purposes of this Article.

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.

Proposed Section 33003 would describe the SMCS-provided notice of election and posting requirements thereof.

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.

Proposed Section 33005 would provide voter eligibility requirements.

Proposed Section 33006 would provide for a process to challenge the eligibility of a voter.

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.

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.

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.

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.

Proposed Section 33011 would provide a party the ability to withdraw its objections prior to a final decision by the Board.

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.

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.

CONSISTENT AND COMPATIBLE WITH EXISTING STATE REGULATIONS

During the process of developing these regulations and amendments, PERB has conducted a search of any similar regulations on this topic and has concluded that these regulations are neither inconsistent nor incompatible with existing state regulations.

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 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.

DISCLOSURES REGARDING THE PROPOSED ACTION

Mandate on local agencies and school districts: Initial determination of the agency is that the proposed action would not impose any new mandate.

Cost to any local agency or school district which must be reimbursed in accordance with Government Code section 17500 et seq: Initial determination of the agency is that the proposed action would not impose any new costs which must be reimbursed.

Other non-discretionary cost or savings imposed upon local agencies: Initial determination of the agency is that the proposed action would not result in any other non-discretionary cost or savings imposed upon local agencies.

Costs or savings to state agencies: None. These proposed regulations do not apply to or impact state agencies.

Cost or savings in federal funding to the state: None

Cost impact on representative private persons or businesses: The agency is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Significant statewide adverse economic impact directly affecting business including the ability of California businesses to compete with businesses in other states: Initial determination of the agency is that the proposed action will have no impact.

Significant effect on housing costs: The agency's initial determination is that there is no effect on housing costs.

The proposed regulations will not affect small business because they only affect public employers and public employees.

RESULTS OF THE ECONOMIC IMPACT ASSESSMENT

The adoption of the proposed amendments 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. 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.

CONSIDERATION OF ALTERNATIVES

A rulemaking agency must determine that no reasonable alternative considered by the agency or that has otherwise been identified and brought to the attention of the agency would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

The Board invites interested persons to present statements or arguments with respect to alternatives to the proposed regulations at the above-mentioned hearing or during the written comment period.

PRELIMINARY ACTIVITIES

PERB staff invited comments on possible regulation changes at PERB Advisory Committee meetings held on January 17, 2013 and February 28, 2013, and circulated discussion drafts of possible regulation changes prior to those meetings. The Board also relied upon the Economic Impact Assessment identified in this Notice in proposing regulatory action.

AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

The Board will have the entire rulemaking file available for inspection and copying throughout the rulemaking process at its office, at the address below. As of the date this notice is published in the California Regulatory Notice Register, the rulemaking file consists of this notice, the proposed text of the regulations and the Initial Statement of Reasons. Copies of these documents and the Final Statement of Reasons, when available, may be obtained by contacting Jonathan Levy or Katharine Nyman at the address or phone number listed below, and are also available on the Board's web site (see address below).

ADOPTION OF PROPOSED REGULATIONS, AVAILABILITY OF CHANGED OR MODIFIED TEXT AND FINAL STATEMENT OF REASONS

Following the hearing, the Board may adopt the proposed regulations substantially as described in this notice. If modifications are made which are sufficiently related to the originally proposed text, the modified text—with changes clearly indicated—shall be made available to the public for at least 15 days prior to the date on which the Board adopts the regulations. Requests for copies of any modified regulations and/or the final statement of reasons should be sent to the attention of Jonathan Levy or Katharine Nyman at the address indicated below. The Board will accept written comments on the modified regulations for 15 days after the date on which they are made available.

INTERNET ACCESS

The Board will maintain copies of this Notice, the Initial Statement of Reasons and the text of the proposed regulations on its web site, found at www.perb.ca.gov, throughout the rulemaking process. Written comments received during the written comment period will also be posted on the web site. The Final Statement of Reasons or, if applicable, notice of a decision not to proceed will be posted on the web site following the Board's action.

CONTACT PERSONS

Any questions or suggestions regarding the proposed action or the substance of the proposed regulations should be directed to:

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