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September 20, 2016

**Item Name:** Proposed Regulation – Public Comment at Board Meetings

**Program:** Board Governance

**Item Type:** Action

**Recommendation**

Staff recommends that the Board approve the initiation of the rulemaking process to establish rules and procedures governing public comment at meetings of the Board and its committees.

**Executive Summary**

The proposed regulation (Attachment 1) would (1) define the appropriate topics for public comment; (2) provide each member of the public with up to three minutes for public comment per agenda item, with a cumulative limitation of nine minutes per meeting; (3) authorize the Presiding Officer of the meeting to increase or reduce these limits; and (4) authorize the Presiding Officer to stop a member of the public from providing public comment when his or her conduct disrupts the orderly conduct of the meeting.

**Strategic Plan**

This agenda item supports the CalPERS Strategic Plan goal to cultivate a high-performing, risk-intelligent and innovative organization. Establishing this regulation over public comment will facilitate participation by members, stakeholders, and other members of the public, and ensure that the Board and its committees can complete their work efficiently.

**Background**

Meetings of the Board and its committees are governed by the Bagley-Keene Open Meeting Act (Act). Among other things, the Act requires that CalPERS provide members of the public with an opportunity to address the Board before or during the discussion of each agenda item. To effectuate this purpose, the Act authorizes CalPERS to adopt reasonable regulations on public comment, including limitations on the time allocated to individual speakers. Along with the Board's general rulemaking powers, this confers broad authority on CalPERS to adopt regulations to govern public comment.

Some state agencies have adopted regulations on public comment, as have a number of local agencies.<sup>1</sup> (Attachment 2 collects the public comment practices of selected state and local agencies.) Most of these agencies have adopted a limit of three minutes per speaker during public comment, and courts have upheld this limit when it has been challenged.

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<sup>1</sup> While the meetings of state agencies are governed by the Bagley-Keene Open Meeting Act, local agencies are governed by the Ralph M. Brown Act. Although there are differences between the two acts, both contain provisions that are essentially identical with respect to public comment.

For many years, CalPERS generally provided members of the public with two minutes for public comment, subject to the Board President or Committee Chair's discretion. In more recent years, CalPERS has generally provided members with three minutes for public comment, subject to the same discretion. Historically these timeframes have proven to be adequate for members of the public to address the Board, while also accommodating the Board's need to complete its work efficiently.

Recently, an issue arose as to whether time limits can be imposed on public comment where the Board has not formally adopted a regulation pursuant to the California Administrative Procedures Act (APA). While this issue is not free from doubt, staff recommends that the Board resolve any ambiguity in this area by adopting a formal regulation pursuant to the APA. In that regard, the proposed regulation (Attachment 1) addresses this issue, and is intended to define the appropriate subjects for public comment and to set forth the rules applicable to individual speakers.

### **Analysis**

The proposed regulation limits the topics of discussion during public comment to the subject matter of the agenda item being heard. For the majority of agenda items this means that a speaker's comments must be related to the subject matter of the agenda item being considered by the Board.

The proposed regulation provides individual speakers with up to three minutes for public comment per agenda item, and prohibits one speaker from transferring his or her time to another speaker. It further establishes a cumulative limit for individual speakers of nine minutes per Board or committee meeting.

The proposed regulation also permits the meeting's "Presiding Officer" (usually the chair of the meeting) to increase or decrease these time limits, and sets forth several factors the Presiding Officer should consider.

Lastly, the proposed regulation authorizes the meeting's Presiding Officer to stop a member of the public from continuing to provide public comment if he or she fails to adhere to the regulation or behaves in a manner that disrupts or impedes the orderly conduct of the meeting.

### **Budget and Fiscal Impacts**

Not applicable.

### **Benefits and Risks**

The proposed regulation will ensure that all members of the public are afforded an equal opportunity to address the Board during public comment. It will also provide clarity about the rules applicable to public comment and serve the public interest in conserving time at Board meetings, ensuring that the Board is able to complete the work on its agendas in a reasonably efficient manner.

**Attachments**

Attachment 1 – Text of Proposed Regulation for Public Comment

Attachment 2 – Survey of Public Comment Practices of Selected State and Local Agencies

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