



Board Governance Committee Agenda Item 10

December 20, 2016

Item Name: Approval of Final Proposed Regulation on Public Comment and Public Hearing
(9:00 a.m. TIME CERTAIN)

Program: Board Governance

Item Type: Action

Recommendation

Staff recommends the Board Governance Committee (Committee) approve for submission to the Office of Administrative Law (OAL) the proposed regulation establishing rules and procedures governing public comment at meetings of the Board and its committees.

Executive Summary

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

The proposed regulation was made available to the public for a 45-day comment period and three comments were received. Staff is not recommending any changes to the proposed regulation.

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

At the September 2016 Board of Administration meeting, the Board approved the initiation of the rulemaking process for the proposed regulation. Staff subsequently filed a Notice of Proposed Rulemaking with OAL to initiate the rulemaking process and begin the 45-day written comment period during which interested persons could submit comments regarding the proposed regulation.

The proposed regulation (Attachment 1) has four principal provisions. First, 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.

Second, 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.

Third, the proposed regulation authorizes the meeting's Presiding Officer (usually the chair of the meeting) to increase or decrease this time limit, 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.

Analysis

The Notice of Proposed Regulatory Action was published in the California Regulatory Notice Register 2016, No. 42-Z, File No. Z2016-1004-04, on October 14, 2016 (Attachment 2). The 45-day comment period commenced on October 14, 2016 and closed on November 28, 2016. A total of three comments were received during the comment period.

The public hearing was appropriately noticed for December 20, 2016 at 9:00 a.m. Interested parties may present testimony and comments regarding the proposed regulatory action. The Committee and CalPERS staff are not required to respond to public comments during the hearing; however, all submissions will ultimately receive a written response from CalPERS that will be included as part of the final rulemaking file.

If the Committee and Board approve submission of the proposed regulation, staff will prepare the rulemaking file and submit it to OAL for their review. OAL has 30 days to review the rulemaking file. Assuming that the proposed regulation passes OAL's scrutiny, OAL will then file the regulation with the Secretary of State for official publication in the California Code of Regulations and the regulation will be effective in early-to-mid 2017.

Summary of Written Comments

CalPERS received three comments during the public comment period (Attachment 3). CalPERS received a three-page comment letter submitted by John Michael Jensen, dated October 17, 2016. In general, Mr. Jensen contends that parts of the proposed regulation conflict with the First Amendment of the U.S. Constitution. CalPERS also received a two-page letter from SEIU. SEIU questions the overall necessity of the proposed regulation and whether three minutes is the right number for a time limit. SEIU also offered suggestions relating to the increase or decrease in the time limit and the application of the subject matter limitations. Finally, CalPERS received a brief email from David Noland asserting his disagreement with limiting a speaker's time to comment. CalPERS' staff has considered each of these comments and is not persuaded that any changes are needed. Accordingly, staff is not recommending any changes to the proposed regulation.

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

Attachment 2 – Notice of Proposed Rulemaking

Attachment 3 – Public Comments Received During 45-Day Comment Period

Matthew G. Jacobs

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