



COMMENTS OF SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 1000

REGARDING PROPOSED SECTION 552.1 OF ARTICLE 1 OF SUBCHAPTER 1 OF DIVISION 1 OF TITLE 2 CALIFORNIA CODE OF REGULATIONS

Service Employees International Union, Local 1000 (Local 1000) welcomes the opportunity to provide comments on CalPERS proposed Public Comment regulation. SEIU represents about 90,000 active CalPERS members many of whom will receive pension and health benefits as retired members.

These comments address three specific areas of the proposed regulation: (1) time limits for public comment; (2) change of time limits and (3) jurisdiction of comment.

Local 1000 is not convinced that CalPERS has demonstrated a need for the proposed regulation.

What is the Problem Being Addressed?

The Initial Statement of Reasons (ISORs) asserts that the proposed regulation will ensure members of the public an equal opportunity to express their viewpoints and potentially impact the decisions being made. Further, the ISORs claim that the PERS Board of Administration will be able to “accomplish its business in a reasonably efficient manner.” The equal opportunity reason is already guaranteed commenters under the existing Bagley-Keene Open Meeting Act (Government Code section 11120 et seq.). The second reason is presumption or speculation and like beauty is in the eyes of the beholder.

SEIU questions whether PERS has met the “necessity” standard of the Administrative Procedures Act (Government Code Section 1130 et seq.) and section 10 of Title 1 of the California Code of Regulations (CCR). The ISORs do not enumerate problems that may have arisen at Committee and Board meetings that the proposed regulation would resolve. Rather the ISORs state that the Bagley-Keene Act, at section 11125.7, allows an agency to have rules covering public comment. It should be noted that the Legislature did not mandate agencies adopt rules and limitations on public comment but simply said that agencies could.

Section 552.1 (b)(2): Time Limits

The proposed regulation will establish a three (3) minute limit on each speaker. PERS states that it “believes” that the three-minute time period provides sufficient time for a public member to present and/or argue its specific issue(s). No empirical studies are provided to support this contention. Rather it is asserted that this time frame is consistent with the practice of many state and local government agencies. This lack of evidence makes it difficult to determine what the appropriate time should be. Local 1000 does believe that the three-minute limit is not unreasonable and is consistent with current practice.

Section 552.1 (b) (3): Altering Time Limits

Local 1000 is concerned with that the process for the Presiding Officer to change the public comment time limit. Local 1000 appreciates that the existence of a large number of speakers and the number of agenda items might cause a Presiding Officer to reduce the amount of time provided for each commenter. Local 1000 suggests that importance and/or complexity of the agenda item or subject should be added as a valid reason for a Presiding Officer to establish a time limit that is greater than the standard three-minute limit. An example, during the November 2016 Finance and Administration Committee meeting, the Chairperson understanding the importance of the “Discount Rate” provided each party with up to ten minutes of speaking time.

Section 552.1 (b)(1): Subject Matter

Sub-section (b)(1) “Subject matter” would limit public comment to the subject matter jurisdiction of a committee or CalPERS in the case of the Board of Administration meetings. While this proposal is well intended it has the potential to harm members of the public who do not know the sometimes arcane jurisdictional areas of the various CalPERS committees. Recently, a local agency representative made a comment regarding a technical pension related issue during the public comment agenda item of the Pension and Health Benefits Committee. The subject matter was really within the jurisdiction of the Finance and Administration Committee (and was actually part of an agenda item of that Committee, which was meeting later on the same day). The Pension and Health Benefits Committee Chairperson did not rule the commenter as “out of order,” which the proposed regulations would allow.

The proposed “subject matter” regulation as written will have very little impact on PERS “insiders,” but could quiet the “little guy.” Such a result will tend to frustrate one of the tenet of the Bagley-Keene Act—unfettered public participation.