

INITIAL STATEMENT OF REASONS

Proposed amendment to add Section 552.1 to Article 1 of Subchapter 1 of Division 1 of Title 2 of the California Code of Regulations (CCR).

By proposing this regulation, the California Public Employees' Retirement System ("CalPERS") seeks to ensure that (1) members of the public in attendance at meetings of the Board of Administration ("Board") and its committees are afforded an equal opportunity to directly address the Board; and, (2) the Board is able to accomplish its business in a reasonably efficient manner. The proposed regulation is consistent with existing law and is reasonably necessary to establish fair and transparent processes.

PROBLEM THE PROPOSED REGULATION INTENDS TO ADDRESS

Existing law recognizes the Board's authority to regulate the meetings of the Board and its committees. Section 11125.7 of the Bagley-Keene Open Meeting Act (Gov. Code § 11120 et seq.) further permits each state body to develop specific rules and limitations on public comment. To create this specificity, the proposed regulation provides as follows.

First, the proposed regulation specifies that the subject of public comment must correspond to the topic of the agenda item before the Board or committee, and in the case of the generically-titled "public comment" agenda item, must be within the Board or committee's subject-matter jurisdiction.

Second, the proposed regulation provides individual speakers with up to three minutes of speaking time per agenda item. The regulation also provides that this time may not be shared with other speakers to increase their speaking time.

Third, the proposed regulation vests authority in the Presiding Officer to increase or decrease the time for individual speakers on a case-by-case basis, provided that this authority is exercised without regard to the viewpoint of the speaker. The proposed regulation sets forth several factors that the Presiding Officer must consider in exercising this discretion.

Finally, the proposed regulation vests authority in the Presiding Officer to stop members of the public from delivering public comment when they engage in disorderly conduct that disrupts, disturbs, or otherwise impedes the orderly conduct of the meeting. The proposed regulation specifically highlights failing to comply with the proposed regulation and unduly repetitious comments as examples of behavior that may trigger this provision when they actually impede the orderly conduct of the meeting.

PURPOSE, BENEFITS, OR GOALS OF THE AUTHORIZING STATUTES

The primary purpose and benefit of the proposed regulation is to ensure that (1) members of the public in attendance at meetings of the Board and its committees are afforded an equal opportunity to directly address the Board; and, (2) the Board is able to accomplish its business in a reasonably efficient manner.

There are three principal authorizing statutes. The first two statutes vest in the Board management and control of the retirement system, and authorize the Board to make such rules as it deems proper. (Cal. Gov. Code §§ 20120, 20121.) The third statute, part of the Bagley-Keene Act (Cal. Gov. Code § 11120 et seq.), grants state bodies authority to adopt reasonable regulations to provide an opportunity for and reasonable limitations upon public comment during Board meetings. (Cal. Gov. Code § 11125.7.) Courts have long recognized that the meetings of deliberative bodies such as the Board are the focus of highly important individual and governmental interests. The overarching purpose and goal of these statutes is to enable the Board to carry out the people's business of administering the retirement system for California's public employees, retirees, and beneficiaries, and to do so in a manner that affords members of the public an opportunity to participate through public comment at meetings.

RATIONALE FOR DETERMINATION THAT ADOPTION IS REASONABLY NECESSARY TO ADDRESS THE PROBLEM

The proposed regulation is necessary to administer and facilitate public comment during meetings of the Board and its committees. Existing law permits time limits on public comment but does not specify what those limits should be. The limitations that may be imposed on public comment can often turn on individualized factual scenarios that naturally vary from meeting to meeting. As such, the efficient administration of public comment would benefit from a set of standardized rules. Standardized rules would allow for a process to adjust and accommodate time limits for individual speakers so that all members of the public wishing to speak have an equal opportunity to do so. This would also allow for public comment to take place in a manner that respects the strong public interest in the Board and committees completing the work on their agenda.

SPECIFIC PURPOSE FOR THE ADOPTION OF THE PROPOSED REGULATION

Purpose of the Proposed Addition of Section 552.1, “Public Comment”

Subdivision (a) of the proposed regulation is necessary to provide definitions for two terms that are used in several places. The definition of “Body” in subdivision (a)(1) is necessary to clarify which state bodies are subject to the proposed regulation. The definition of “Presiding Officer” in subdivision (a)(2) is necessary to define which Board member will serve as the “Presiding Officer” in a meeting.

Subdivision (b) is the heart of the proposed regulation. Subdivision (b)(1), entitled “Subject matter,” lays out the appropriate subject matter for public comment on different types of agenda items. For the designated “public comment” agenda item included with each meeting, public comment is limited to the subject matter of the respective committee, or of CalPERS itself in the case of the Board. For all other agenda items, public comment is limited to issues germane to the topic of the agenda item. CalPERS believes these limitations are reasonable because the intent of the Legislature in requiring state bodies to provide an opportunity for public comment was to allow the public to participate in meetings by directly addressing the state body on the subject of each agenda item, not to create a traditional public forum.

Subdivision (b)(2), entitled “Time limits,” provides the baseline rule for how time is allocated for public comment. CalPERS believes that allowing individual speakers up to three minutes of speaking time per agenda item is reasonable for public comment. This is sufficient time for most individuals to provide prepared or extemporaneous remarks, while also allowing sufficient time for other members of the public to have their say. Furthermore, providing up to three minutes per speaker accords with the practice of many state and local agencies and has been found permissible under the Ralph M. Brown Act (Cal. Gov. Code 54950 et seq.), the local-agency analogue to the Bagley-Keene Act (see *Chaffee v. San Francisco Public Library Com.* (2005) 134 Cal.App.4th 109).

Subdivision (b)(3), establishes that the Presiding Officer may increase or decrease the time limitations for public comment and sets forth several factors that must be considered with respect to that decision. CalPERS believes this flexibility is reasonable and strikes the right balance between the public interest in the Board completing the work on its agenda and each speaker’s interest in participating in meetings of the Board and its committees. It is necessary because there may be times where important issues warrant additional time for speakers, or where the Board has made short work of the business and on its agendas and only a few speakers have requested to speak. Conversely, there may be times where the number of meetings, the quantity of agenda items, or the total number of individual speakers requires a reduction in the amount of time afforded to each speaker so that the agenda can be

completed and all speakers are still afforded an opportunity to provide comment.

Subdivision (b)(4) vests in the Presiding Officer the Board's authority to stop a speaker from speaking when they engage in conduct that disrupts the meeting of the Board or one of its committees. Failing to adhere to the proposed regulation or being unduly repetitious are noted as examples of conduct that may disrupt the meeting. CalPERS believes this is necessary because the Presiding Officer is charged with conducting the meeting and is responsible for seeing that the work on the agenda is completed in an orderly fashion. This includes preventing individuals from disrupting the meeting. This provision alerts members of the public that engaging in conduct that disrupts the meeting while speaking may lead to a revocation of their ability to continue speaking.

BENEFITS ANTICIPATED FROM THE REGULATORY ACTION

The primary benefit of the proposed regulation is that it will increase openness and transparency by creating consistent rules for public comment that will afford an equal speaking opportunity for all members of the public in attendance. The proposed regulation will also contribute to the efficient and orderly completion of the work on the Board's agenda.

TECHNICAL, THEORETICAL, AND/OR EMPIRICAL STUDIES, REPORTS, OR DOCUMENTS RELIED UPON BY THE AGENCY

Economic and Fiscal Impact Statement (STD. 399) was prepared and relied upon.

ECONOMIC IMPACT ASSESSMENT

In accordance with Government Code section 11346.3(b), CalPERS has made the following assessments regarding the proposed regulation:

Creation or Elimination of Jobs within the State of California

The proposed regulation is intended to establish a clear set of rules to govern public comment at meetings of the Board and its committees. The proposed regulation will be administered by existing CalPERS staff. No jobs within the state of California will be created or eliminated by the proposed regulation.

Creation of New or Elimination of Existing Businesses within the State of California

The proposed regulation is intended to establish a clear set of rules to govern public comment at meetings of the Board and its committees. The proposed regulation will be administered by existing CalPERS staff. No businesses

within the state of California will be created or eliminated by the proposed regulation.

Expansion of Businesses within the State of California

The proposed regulation is intended to establish a clear set of rules to govern public comment at meetings of the Board and its committees. The proposed regulation will be administered by existing CalPERS staff. It is not expected that any existing businesses within the State of California will be expanded or prevented from expanding by the proposed regulation.

Benefits of the Regulation to the Health and Welfare of California Residents, Worker Safety, and the State's Environment

The proposed regulation is intended to establish a clear set of rules to govern public comment at meetings of the Board and its committees. The proposed regulation will improve the health and welfare of California residents by providing a uniform and structured forum for members of the public to participate in Board meetings.

ALTERNATIVES TO THE REGULATORY ACTION AND CALPERS REASONS FOR REJECTING THOSE ALTERNATIVES

CalPERS considered an overall time limit for public comment on each agenda item in lieu of the Presiding Officer's ability to increase or decrease individual time limits. CalPERS rejected this alternative because it could inadvertently and unnecessarily prevent members of the public from speaking where there otherwise might be ample time available for public comment. Removing the overall time limit on public comment and augmenting the proposed regulation with the Presiding Officer's ability to increase or decrease the time available to individual speakers provides greater flexibility to accommodate all speakers in attendance while still respecting the public interest in the Board completing the work on its agenda.

The Board invites interested persons to present statements or arguments with respect to alternatives to the proposed regulation during the written comment period.

FACTS AND OTHER EVIDENCE ON WHICH CALPERS RELIES TO SUPPORT INITIAL DETERMINATION THAT REGULATION WILL NOT HAVE A SIGNIFICANT ADVERSE ECONOMIC IMPACT ON BUSINESS

The proposed regulation is designed to apply to CalPERS. Specifically, it governs the public's right to provide comment at meetings of the Board. CalPERS believes that limiting all members of the public, including the officers, employees, and stakeholders of a business, to up to three minutes of public comment per agenda item provides a reasonably opportunity for participation in meetings of the Board and would not adversely affect the competitive ability

of business. Even assuming some adverse economic impact, CalPERS believes it would not be significant.

ALTERNATIVES TO THE REGULATORY ACTION THAT WOULD LESSEN ADVERSE IMPACT ON SMALL BUSINESS

The proposed regulation is designed to apply to CalPERS. CalPERS has not identified any adverse impacts on small businesses. As such, reasonable alternatives that would lessen the impact on small businesses were not considered.