

**California Code of Regulations**  
**Title 2. Administration**  
**Division 1. Administrative Personnel**  
**Chapter 2. Board of Administration of Public Employees' Retirement System**

**NOTICE OF PROPOSED REGULATORY ACTION**

NOTICE IS HEREBY GIVEN that the Board of Administration (Board) of the California Public Employees' Retirement System (CalPERS) is proposing to take the regulatory action described below in the Informative Digest after considering public comments, objections, and recommendations regarding the proposed regulatory action.

**I. PROPOSED REGULATORY ACTION**

In this filing, the Board proposes to add the Section 552.1 to Article 1 of Subchapter 1 of Division 1 of Title 2 of the California Code of Regulations (CCR). The proposed regulation would (1) limit the subject matter appropriate for discussion during public comment; (2) provide a time limit on individual speakers during public comment; (3) authorize the meeting's Presiding Officer to increase or decrease this time limit; and, (4) authorize the Presiding Officer to stop an individual speaker from continuing to speak under specified circumstances.

**II. WRITTEN COMMENT PERIOD**

Any interested person may submit written comments relevant to the proposed regulatory action. The written comment period has been established commencing on October 14, 2016 and closing on November 28, 2016 at 5:00 p.m. The Regulation Coordinator must **receive** all written comments by the close of the comment period. Comments may be submitted via fax at (916) 795-4607; emailed to [Regulation\\_coordinator@calpers.ca.gov](mailto:Regulation_coordinator@calpers.ca.gov) or mailed to the following address:

Anthony Martin, Regulation Coordinator  
California Public Employees' Retirement System  
P.O. Box 942702  
Sacramento, CA 94229-2702  
Phone: (916) 795-3038

### **III. PUBLIC HEARING**

A public hearing will be held before the CalPERS Board at the time, date and location listed below.

#### **NOTICE THAT A PUBLIC HEARING IS SCHEDULED**

**Tuesday, December 20, 2016**

Beginning at 9:00 a.m.

CalPERS Auditorium, Lincoln Plaza North

400 Q Street

Sacramento, CA 95811

### **IV. ACCESS TO HEARING ROOM**

The CalPERS Auditorium will be accessible to persons with mobility impairments, and it can be made accessible to persons with hearing or visual impairments upon advance request to the CalPERS Regulation Coordinator.

### **V. AUTHORITY AND REFERENCE**

The Board's authority to add the proposed regulation to the CCR derives from the Board's plenary authority and fiduciary responsibility over the assets of the public retirement system and exclusive responsibility to administer the system in a manner that will assure prompt delivery of benefits and related services to the members and their beneficiaries, pursuant to the California Constitution (Section 17 of Article XVI) and in accordance with California Government Code sections 20120-20121. In addition, other Sections of the California Government Code that provide authority include section 11125.7 of the Bagley-Keene Open Meeting Act (Gov. Code § 11120 et seq., hereinafter referred to as "the Bagley-Keene Act").

Reference citations: California Government Code Sections 11125.7, 20120, and 20121.

### **VI. INFORMATIVE DIGEST**

Article XVI, section 17 of the California Constitution grants the Board plenary authority and fiduciary responsibility for administering the retirement system and investing its assets. Government Code section 20120 similarly vests management and control of the system in the Board and section 20121 grants the Board power to make such rules as it deems proper.

The Bagley-Keene Act generally requires that state bodies conduct their business in open, noticed meetings so that the public may attend the meetings and have an opportunity to comment upon the work of the body. Government Code section 11125 requires a state body to provide notice at least 10 days in advance of its meetings. This notice must include a specific agenda that lists the items of business that the state body will act upon or discuss at the meeting. Government Code section 11125.7 requires that the state body provide an opportunity for members of the public to directly address the state body on each agenda item, before or during the state body's discussion or consideration of the item. As state bodies under the Bagley-Keene Act, the Board and its committees hold regular meetings and frequently receive public comment from CalPERS members, employers, stakeholders, and other members of the public.

Government Code section 11125.7 also authorizes a state body to adopt reasonable regulations to govern public comment at meetings. Section 11125.7 specifically notes that a regulation imposing time limits on individual speakers is appropriate. The Board is therefore authorized to adopt regulations over public comment.

The proposed regulation is consistent with current law and intended to provide a clear set of rules to govern public comment at meetings of the Board and its committees.

Specifically, the proposed regulation will:

- Define the terms "Body" and "Presiding Officer," which are used throughout the proposed regulation.
- Limit public comment to the subject matter at hand during a meeting. For a particular agenda item, public comment is limited to issues germane to the topic of the agenda item. CalPERS also includes a general "public comment" agenda item during each meeting, and the proposed regulation limits public comment on this item to the subject matter jurisdiction of the respective committee, or of CalPERS in the case of the Board.
- Provide individual speakers with up to three minutes for public comment on an individual agenda item. The unused speaking time of one speaker is not transferable to another member of the public.
- Authorize the Presiding Officer to increase or decrease the time available for public comment, based upon several factors that he or she must consider when exercising this discretion.

- Authorize the Presiding Officer to stop a speaker from providing public comment when the speaker fails to adhere to the requirements in the proposed regulation, is unduly repetitious, or engages in any other disorderly conduct that disrupts, disturbs or otherwise impedes the orderly conduct of the meeting.

### **Policy Statement Overview / Anticipated Benefits**

Engagement with members, beneficiaries, stakeholders, and members of the public is important and an essential component of good governance. CalPERS has long welcomed and afforded the opportunity for public comment at Board and committee meetings. For many years now, CalPERS has held meetings over the course of three days each month from February through June and August through December. The work involved over the course of those three days encompasses the consideration of hundreds of pages of agenda items and the meetings of several committees, culminating in a meeting of the entire Board on the third day of meetings. Through this regulation, CalPERS seeks 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. CalPERS anticipates that the proposed regulation will increase openness and transparency by bringing greater attention to the availability of public comment and by clearly laying out the rules that govern how such comments may be made. The time limit per speaker coupled with the Presiding Officer's ability to increase or decrease that time will have several beneficial effects. Chiefly, it will promote fairness by ensuring that each member of the public wishing to speak has an opportunity to do so on an equal footing with other speakers. Secondly, it will help ensure that the Board is able to complete its agenda in a reasonably efficient manner. Furthermore, setting forth standardized rules and time limits in a formal regulation will help ensure that there is a consistent approach to public comment at Board and committee meetings and across the years as the membership of the Board inevitably changes.

### ***Consistency and Compatibility with Existing Regulations***

CalPERS evaluated whether there were any other laws or state regulations on this topic and has concluded that the proposed regulation is neither inconsistent nor incompatible with existing law or existing state regulations.

### ***Pre-notice Consultation with the Public***

No pre-notice consultation was done with the public, as the proposed regulation does not involve complex proposals or a large number of proposals that cannot easily be reviewed during the comment period.

## **VII. EFFECT ON SMALL BUSINESS**

The proposed regulatory action does not affect small business because it applies only to CalPERS and those members of the public who attend meetings of the Board.

## **VIII. DISCLOSURES REGARDING THE PROPOSED REGULATORY ACTION**

- A. **MANDATE ON LOCAL AGENCIES AND SCHOOL DISTRICTS:** The proposed regulatory action does not impose any mandates on local agencies and school districts.
- B. **COSTS OR SAVINGS TO ANY STATE AGENCY:** The proposed regulatory action will not result in any additional costs or savings to any State agency.
- C. **COSTS TO ANY LOCAL AGENCY OR SCHOOL DISTRICT:** The proposed regulatory action will not result in any costs on any local agency or school district.
- D. **NONDISCRETIONARY COSTS OR SAVINGS IMPOSED ON LOCAL AGENCIES:** The proposed regulatory action does not impose any nondiscretionary costs or savings on local agencies.
- E. **COSTS OR SAVINGS IN FEDERAL FUNDING TO THE STATE:** The proposed regulatory action will not result in additional costs or savings in federal funding to the State.
- F. **ADVERSE ECONOMIC IMPACT:** The proposed regulatory action will not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.
- G. **COST IMPACT ON REPRESENTATIVE PRIVATE PERSONS OR BUSINESSES:** CalPERS is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed regulatory action.
- H. **RESULTS OF THE ECONOMIC IMPACT ANALYSIS:** The proposed regulatory action: (1) will not create or eliminate jobs within California; (2) will not create new businesses or eliminate existing businesses within California; (3) will not affect the expansion of businesses currently doing business within California; and, (4) will benefit the health and welfare of California residents by providing a

uniform and structured forum for members of the public to participate in Board meetings.

- I. EFFECT ON HOUSING COST: The proposed regulatory action has no effect on housing cost.
- J. COSTS TO ANY LOCAL AGENCY OR SCHOOL DISTRICT WHICH MUST BE REIMBURSED IN ACCORDANCE WITH GOVERNMENT CODE SECTIONS 17500 THROUGH 17630: there are no costs to any local agency or school district which must be reimbursed in accordance with Government Code sections 17500 through 17630.

**IX. CONSIDERATION OF ALTERNATIVES**

In accordance with Government Code Section 11346.5(a)(13), the Board must determine that no reasonable alternative considered by the Board, or that has otherwise been identified and brought to the attention of the Board, would be more effective in carrying out the purpose for which the regulatory action is proposed, or would be as effective as, 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 scheduled hearing or during the written comment period.

**X. CONTACT PERSON**

Please direct inquiries concerning the proposed regulatory action to:

Anthony Martin, Regulation Coordinator  
California Public Employees' Retirement System  
P.O. Box 942702  
Sacramento, CA 94229-2702  
Phone: (916) 795-3038

The backup contact for these inquiries is:

Christina Nutley, Regulation Coordinator  
California Public Employees' Retirement System  
P.O. Box 942702  
Sacramento, CA 94229-2702  
Phone: (916) 795-3038

Please direct requests concerning the copies of the proposed text (the “express terms”) of the regulations, the Initial Statement of Reasons, the modified text of the regulations, if any, or other information about processing of this regulatory action to Anthony Martin, Regulation Coordinator, at [Regulation\\_coordinator@calpers.ca.gov](mailto:Regulation_coordinator@calpers.ca.gov).

#### **XI. AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS, AND RULEMAKING FILE**

The entire rulemaking file is available for public inspection through the Regulation Coordinator at the address shown in section II. To date, the file consists of this Notice, the proposed text of the regulations, the Initial Statement of Reasons, the Economic Impact Assessment, and the Economic and Fiscal Impact Statement. A copy of the proposed text, the Initial Statement of Reasons, the Economic Impact Assessment, and the Economic and Fiscal Impact Statement is available at no charge upon telephone or written request to the Regulation Coordinator.

For immediate access, the regulatory material regarding this action can be accessed at CalPERS’ website at [www.calpers.ca.gov](http://www.calpers.ca.gov).

#### **XII. AVAILABILITY OF CHANGED OR MODIFIED TEXT**

The Board may, on its own motion or at the recommendation of any interested person, modify the proposed text of the regulations after the public comment period closes.

If the Board modifies its regulatory action, it will prepare a comparison of the original proposed text and the modifications for an additional public comment period of not less than 15 days prior to the date on which the Board adopts, amends, or repeals the resulting regulation. A copy of the comparison text will be mailed to all persons who submitted written comments or asked to be kept informed as to the outcome of this regulatory action.

#### **XIII. AVAILABILITY OF THE FINAL STATEMENT OF REASONS**

The Final Statement of Reasons can be obtained, once it has been prepared, by written request to Anthony Martin, Regulation Coordinator, at the address shown above in Section II.