

## **INITIAL STATEMENT OF REASONS**

### **PROBLEM STATEMENT**

These proposed regulations aim to implement the Judicial Council Employer-Employee Relations Act (JCEERA), a statutory scheme that establishes collective bargaining rights for certain employees of the Judicial Council, the policymaking body of the California courts. As a result of the enactment of Assembly Bill 83 (Stats. 2017, Ch. 835), effective January 1, 2018, the Public Employment Relations Board (PERB or Board) is responsible for the administration and enforcement of the Judicial Council Employer-Employee Relations Act (JCEERA), which is codified at Chapter 10.4 of Title 1 of the Government Code, section 3524.50 et seq. This new legislation, and the duties imposed upon PERB under it, require amendments to PERB's existing regulations, along with the adoption of new regulations, including Chapter 10 to PERB's regulations, in order to fully implement the Board's jurisdiction.

The JCEERA charges PERB with administering and enforcing the Act, but does not establish procedures for processing alleged violations. Rather, the JCEERA leaves it to the Board to determine the procedures that it will implement in order to administer and enforce the JCEERA. PERB regulations either must be created or modified in order to include the statutory mandates of JCEERA, including the filing and processing of unfair practice charges and representation petitions. Government Code section 3541.3, made applicable to the JCEERA pursuant to Government Code section 3524.52, subdivision (a), provides PERB with the power and duty to investigate unfair practice charges and alleged violations of the acts it administers, and to adopt rules and regulations to effectuate the policies underlying the acts it administers. The JCEERA, pursuant to Government Code section 3524.55, provides that the determination of unfair practice charges under the JCEERA is within the exclusive jurisdiction of the Board. In order to exercise its jurisdiction and perform its duties under the JCEERA, PERB must implement a procedure for processing alleged violations of the JCEERA. These proposed regulations apply PERB's existing unfair practice procedures for processing alleged violations of the JCEERA.

The JCEERA, pursuant to Government Code section 3524.74, also charges PERB with establishing rules and procedures for the Judicial Council and its employees regarding representation matters in the areas of unit determination, recognition and certification of employee organizations as exclusive representative of employee units, decertification of employee organizations, and representation elections. In order to exercise its jurisdiction and perform its duties under the JCEERA, PERB regulations must be created and modified to implement procedures for representation petitions, unit determinations, and elections.

The proposed regulation changes that have been identified as necessary for the implementation of PERB's responsibilities pursuant to the JCEERA are described below.

## **ANTICIPATED BENEFITS OF THE PROPOSED REGULATIONS**

JCEERA's implementation affects hundreds of employees of the Judicial Council for purposes of collective bargaining, the employee organizations that represent these employees, and the Judicial Council. A purpose of the JCEERA is to promote full communication between the Judicial Council and its employees by providing a reasonable method of resolving disputes regarding wages, hours, and other terms and conditions of employment between the Judicial Council and public employee organizations. This legislation also seeks to promote the improvement of personnel management and employer-employee relations within the Judicial Council by providing a uniform basis for recognizing the right of Judicial Council employees to join and be represented by employee organizations of their own choosing in their employment relations with the Judicial Council. A further purpose of this legislation is to allow Judicial Council employees to select one employee organization as the exclusive representative of the employees in an appropriate unit. The proposed regulatory changes will implement the Board's jurisdiction over matters arising under the JCEERA and will extend the application of PERB's existing unfair practice procedures to alleged violations of the JCEERA. Because PERB's unfair practice charge process is well-established, the implementation of these procedures for matters arising under the JCEERA will aid in the expedient resolution of disputes arising under the JCEERA, in furtherance of the policies underlying the act. The proposed regulations will also extend existing regulations and add new procedures for the filing and processing of representation petitions and unit determinations arising under the JCEERA. The proposed regulations will ensure that the procedural and substantive rights of Judicial Council employees, employee organizations, and the Judicial Council provided by the JCEERA will be protected. California residents will receive the benefit of stable collective bargaining and dispute resolution in the form of continuous delivery of the essential services that the Judicial Council and its employees provide to California communities.

## **SECTION-BY-SECTION EXPLANATION FOR ADOPTION**

### **A. Adoption of New Sections**

**Proposed Section 32007** adopts a definition of "JCEERA," to mean the Judicial Council Employer-Employee Relations Act (Government Code section 3524.50 et seq.). The Judicial Council Employer-Employee Relations Act has begun to be referred to as the "JCEERA," and the definition in this proposed section reflects the common usage of this term. This proposed section is necessary to promote clarity throughout PERB's regulations.

**Proposed Section 32008** defines terms applicable for cases filed under the JCEERA. This proposed section is necessary to promote clarity throughout PERB's regulations.

Proposed subdivision (a) references the JCEERA's definition of "employee organization" under Government Code section 3524.52, subdivision (c), and includes

in the definition two or more employee organizations that join together in a representation petition as “joint petitioner” or to intervene in a representation election as “joint election intervenor.” This proposed subdivision is necessary in order to provide clarity to parties that PERB regulations relating to an “employee organization”, would also extend to two or more employee organizations that join together in a representation petition or representation election.

Proposed subdivision (b) defines the term “election intervenor,” which is not defined under the JCEERA, to mean any employee organization that files an intervention to appear on the ballot for an election in an appropriate JCEERA unit. This definition is necessary to provide clarity to the parties in identifying employee organizations that file an intervention to appear on a ballot in a representation election as found in proposed Chapter 10, which governs proceedings specific to the JCEERA.

**Proposed Chapter 10** titled Judicial Council Employer-Employee Relations Act, contains proposed regulations (95000-95230) that are specific to the JCEERA. The proposed adoption of this new chapter and the proposed regulations therein is necessary to provide clarity to the parties regarding regulations specific to the JCEERA, and to maintain uniformity in the organizational structure of PERB’s regulations.

**Proposed Subchapter 1** under proposed Chapter 10 for the JCEERA, titled Representation Procedures, contains proposed regulations pertaining to representation matters under the JCEERA. Government Code section 3527.74, subdivision (b) of the JCEERA provides that PERB is to establish procedures for representation petitions, elections, and for determining appropriate employee units. This proposed subchapter is necessary to provide clarity to the parties regarding regulations applicable to representation matters under the JCEERA, and to maintain uniformity in the organizational structure of PERB’s regulations.

**Proposed Article 1** under proposed Chapter 10, titled General Provisions, contains proposed regulations generally relevant to representation matters under the JCEERA, and for certification of an employee organization as the exclusive representative of an appropriate unit of employees of the Judicial Council under Government Code section 3524.74. This proposed article is necessary to provide clarity to the parties regarding regulations generally applicable to representation matters and the procedures for certification of an exclusive representative under the JCEERA, and to maintain uniformity in the organizational structure of PERB’s regulations.

**Proposed Section 95000** defines the term “window period,” which is the time period when representation petitions may be filed during the term of a memorandum of understanding. The “window period” is necessary to support the policy furthered by what is colloquially referred to as the “contract bar.” The purpose of the contract bar is to balance the need for promoting stability in collective bargaining relationships between the employer and exclusive representative during the term of a memorandum of understanding with protecting employees’ right to free choice of their representative.

The window period creates this balance by providing a designated period of time in which a representation petition may be properly filed during the term of a memorandum of understanding. Using a 29-day period prior to the expiration date of a memorandum of understanding for filing representation petitions as found in PERB regulations covering other labor relations statutes PERB administers is necessary to avoid confusion and to maintain consistency in PERB's procedures. (See e.g., PERB Regulations 33020 (Educational Employment Relations Act [EERA; Government Code section 3540 et seq.]); 40130 (Ralph C. Dills Act [Dills Act; Government Code section 3512 et seq.]); 61010 (Meyers-Milias-Brown Act [MMBA; Government Code section 3500 et seq.]); 81010 (Trial Court Employment Protection and Governance Act [Trial Court Act; Government Code section 71600 et seq.]); and 91010 (Trial Court Interpreter Employment and Labor Relations Act [Court Interpreter Act; Government Code section 71800 et seq.]) Accordingly, this proposed section is necessary to provide clarity to the parties regarding when a representation proceeding may be initiated under the JCEERA during the term of a memorandum of understanding.

**Proposed Section 95010** provides a process for employee organizations that are not the exclusive representative of employees of the Judicial Council to receive notice from PERB regarding representation petitions, election notices, or decisions affecting those employees. This proposed section is necessary to provide clarity to the parties regarding the procedures for filing a statement of interest with PERB in order for non-exclusive employee organizations to receive notifications from PERB when representation petitions are filed, or when action is taken by PERB on election matters affecting employees of the Judicial Council.

**Proposed Section 95020** defines the term "parties" to include entities that may be a party to a representation matter. This definition is necessary to provide clarity in the meaning of the term as it is used in proposed Chapter 10, which governs proceedings specific to JCEERA.

**Proposed Section 95030** provides a procedure for employee organizations to petition to be certified as the exclusive representative of an appropriate unit of unrepresented employees.

Proposed subdivision (a) permits an employee organization to file a petition for certification if it wishes to become the exclusive representative of an appropriate unit consisting of employees who are not represented by an exclusive representative and specifies information that must be contained in the petition. Proposed subdivision (a) requires a petition for certification be filed with PERB, which is necessary to initiate certification process with PERB. Proposed subdivision (a) also requires the petition be filed by an authorized agent of the employee organization. This requirement is necessary to ensure that the petition is filed by an individual authorized by the employee organization to do so. Proposed subdivision (a) further requires the petition to include contact information of the employee organization filing the petition. This information is necessary to facilitate PERB's communication with the employee organization. Proposed subdivision (a) further requires the petition to include contact

information of the employer. This information is necessary to facilitate PERB's communication with the employer. Proposed subdivision (a) requires the petition to identify the job titles or classifications of employees in the proposed unit. This information is necessary to apprise PERB and any interested parties of the scope of the employee organization's petition.

Proposed subdivision (b) requires that the petition include proof of at least 30 percent support of the employees in the proposed unit claimed to be appropriate. Proof of support is defined under Section 32700 of existing PERB regulations. Using the existing standard for determining the sufficiency of proof of support is necessary to avoid confusion and to maintain consistency in PERB's procedures for the labor relations statutes it administers. Proof of 30 percent support is the standard threshold of employee support that an employee organization must make when filing a petition for certification. (See e.g., PERB Regulations 40170 (Dills Act), 51100 (Higher Education Employer-Employee Relations Act [HEERA; Government Code section 3560 et seq.]), 61210 (MMBA), 71100 (Los Angeles County Metropolitan Transportation Authority Transit Employer-Employee Relations Act [TEERA; Public Utilities Code section 99560 et seq.]), 81210 (Trial Court Act), and 91210 (Court Interpreter Act).) Using the same threshold in petitions for certification filed under the JCEERA is necessary to avoid confusion and to maintain consistency in PERB's procedures for the labor relations statutes it administers.

Proposed subdivision (c) requires service and proof of service of the petition pursuant to Section 32140 of existing PERB regulations. Service and proof of service are necessary to ensure that all parties receive adequate notice of the petition for certification and can take any appropriate action. The proof of support is excluded from service on other parties because this information is confidential under Section 32700 of existing PERB regulations.

**Proposed Section 95040** provides for the posting of the notice of the petition for certification. Notice of the petition is necessary to apprise employees of the petition so they may take any appropriate action.

Proposed subdivision (a) provides that the notice of the petition, which is a form provided by the Board, will be posted no later than 15 days following service of the copy of the petition. This proposed subdivision is necessary to provide the employer with certainty as to when it must post the notice of the petition for certification, and to maintain consistency in PERB's procedures applicable to labor relations statutes with similar statutory text that PERB administers. (See e.g., Government Code section 3520.5, PERB Regulation 40172 (Dills Act); Government Code section 3524.74 (JCEERA).) Having the Board generate the notice of the petition and provide it to the employer ensures accuracy and consistency in the form and content of the notices.

Proposed subdivision (b) provides the manner in which the Judicial Council must provide notice to employees by posting the notice on all employee bulletin boards in each facility where employees of the unit claimed to be appropriate are employed.

This proposed subdivision identifying the locations where the notice of the petition is to be posted is necessary as a means to apprise the greatest number of affected employees of the petition so they may take any appropriate action.

Proposed subdivision (c) requires the notice to remain posted for 20 days. This proposed subdivision is necessary to ensure that the notice will remain posted for an adequate period of time to reach affected employees, and to maintain consistency in PERB's procedures applicable to labor relations statutes with similar statutory text that PERB administers. (See e.g., Government Code section 3520.5, PERB Regulation 40172 (Dills Act); Government Code section 3524.74 (JCEERA).)

Proposed subdivision (d) requires the notice of the petition be completed by the employer prior to its posting, and that a copy of the petition for certification be included with the notice when posted. This proposed subdivision is necessary to enable the Board and the parties to effectively monitor and enforce the employer's obligation to post the notice and petition, and to provide affected employees with relevant information regarding the petition so they may take any appropriate action.

**Proposed Section 95050** provides a process for the Board to determine proof of employee support for certification petitions. Proof of support is defined under Section 32700 of existing PERB regulations. The purpose of proof of support is to demonstrate employee support for a particular employee organization or petition to warrant invoking Board processes to establish or change an employee unit or run an election.

Proposed subdivision (a) requires the employer file with PERB within 20 days of service of the petition a list of employees employed in the claimed unit as of the last date of the payroll period immediately preceding the date the petition was filed. This proposed subdivision is necessary to provide the employer with certainty as to when it must provide the list of employees, and to maintain consistency in PERB's procedures. (See e.g., PERB Regulations 33075 (EERA), 40174 (Dills Act), 51110 (HEERA), 61240 (MMBA), 71110 (TEERA), 81240 (Trial Court Act), and 91240 (Court Interpreter Act).) The list of employees is necessary for the Board to determine whether the petitioner has sufficiently demonstrated proof of support. The employer is required to provide this information because it is in possession of this information and best-suited to produce it. Limiting the list of employees to those who were on the payroll as of the date the petition was filed allows the Board to determine proof of support at the time the petition was filed.

Proposed subdivision (b) permits the petitioning organization, up to 10 days as determined by the Board, to perfect its proof of support if the initial determination of proof of support is insufficient. This proposed subdivision is necessary because it allows the petitioning employee organization to gather additional proof of employee support rather than requiring it to start the certification process from the beginning when the employee organization is faced with an initial determination of insufficient proof of support, and to maintain consistency in PERB's procedures. (See e.g., PERB

Regulations 33075 (EERA), 40174 (Dills Act), 51110 (HEERA), 61240 (MMBA), 71110 (TEERA), 81240 (Trial Court Act), and 91240 (Court Interpreter Act).)

Proposed subdivision (c) provides a process by which the Board must inform the parties of its final determination of the sufficiency or lack of proof of support. This proposed subdivision is necessary to provide clarity to the parties regarding the Board's obligations in proof of support determinations.

**Proposed Section 95060** allows an employee organization to withdraw a petition for certification prior to a final decision by the Board. This proposed section is necessary to permit parties to withdraw a petition that they no longer wish to pursue. This proposed section also requires that the withdrawal of a petition for certification be filed with PERB, and service and proof of service of the withdrawal, which is necessary to ensure that PERB and all parties receive adequate notice of the withdrawal and can take any appropriate action.

**Proposed Section 95070** concerns amendments to a petition for certification.

Proposed subdivision (a) allows the petitioning employee organization to amend its petition to correct any technical errors or to add or delete job classifications from the proposed unit prior to the issuance of a notice of hearing, or notice of intent to conduct an election. This proposed subdivision is necessary to provide the petitioner with flexibility to correct mistakes that are generally non-substantive in nature, subject to the requirements provided in proposed subdivision (b) for amendments that add new job classifications to a proposed unit. These types of corrections will most likely not affect the parties' rights, especially if the Board has yet to determine that a hearing is necessary regarding the petition. The requirement of service and proof of service by the petitioner is necessary to ensure that any interested parties receive notice and a copy of the amended petition.

Proposed subdivision (b) specifies additional requirements for amendments to a petition for certification when a petitioning organization seeks to add new job classifications to a proposed unit. Proposed subdivision (b)(1) requires the petitioning employee organization provide additional proof of support, if needed to maintain standing as a petitioner, and to file the proof of support with the amended petition with PERB. This proposed subdivision is necessary to ensure that if the amendment to the petition is to add new job classifications to the proposed unit that the standard threshold of at least 30 percent proof of employee support that an employee organization must make when filing a petition for certification is maintained, as required under proposed section 95030, subdivision (b).

Proposed subdivision (b)(2) provides that the employer is to file a response to the amended petition within 15 days following service on the parties of the Board's determination regarding the adequacy of proof of support unless the Board directs otherwise. This proposed subdivision is necessary to create a reasonable time period in which the employer must respond to the amended petition, but does provide the

Board with discretion to adjust the time period as circumstances warrant, and to maintain consistency in PERB's procedures. (See e.g., PERB Regulations 33100 (EERA), 40178 (Dills Act), 51120 (HEERA), 61260 (MMBA), 71120 (TEERA), 81260 (Trial Court Act), and 91260 (Court Interpreter Act).) Proposed subdivision (b)(2) further provides that the employer's response is to conform with the requirements for employer responses to petitions for certification set forth in proposed Section 95080, and this language is necessary for the reasons set forth in proposed Section 95080.

Proposed subdivision (c) provides that any amendments to the petition to correct technical errors or to add or delete job classifications from a party's proposed unit following the issuance of the notice of hearing are at the discretion of the hearing officer. Once the notice of hearing has issued, the parties have begun preparing in earnest to litigate a dispute involving the petition. Allowing the petitioning employee organization to amend the petition at this late stage has the potential to disrupt the proceedings by creating undue delay. Accordingly, this proposed subdivision is necessary to provide the hearing officer with discretion to balance the benefit of amending the petition at this late stage against any impediment caused by the amendment. This proposed subdivision also subjects the hearing officer's discretion to approve an amendment to add job classifications to the requirement that sufficient proof of support is provided if needed as discussed above for proposed subdivision (b)(1).

**Proposed Section 95080** concerns the employer's response to a petition for certification.

Proposed subdivision (a) requires the employer to file a response to a petition for certification within 15 days following service of the Board's determination finding sufficient proof of support. This proposed subdivision is necessary to create a reasonable time period in which the employer must respond to the petition, and to maintain consistency in PERB's procedures. (See e.g., PERB Regulations 33190 (EERA), 40180 (Dills Act), 51130 (HEERA), 61250 (MMBA), 71130 (TEERA), 81250 (Trial Court Act), and 91250 (Court Interpreter Act).)

Proposed subdivision (b) requires the employer to serve the response and provide proof of service. This proposed subdivision is necessary to confirm that the employer complied with its obligation to provide a response to the petition and notice to parties of the response.

Proposed subdivision (c) provides a specific format for the employer to use in drafting its response. This proposed subdivision is necessary to ensure that the employer's response contains all relevant information.

Proposed subdivision (c)(1) requires the response to contain the employer's contact information. This subdivision is necessary to facilitate communication with the employer.



Proposed subdivision (c)(2) requires the response to attach a copy of the petition for certification. Attaching a copy of the petition is necessary to avoid confusion as to which document the employer is responding.

Proposed subdivision (c)(3) requires the employer to state its position regarding the petition. Specifically, proposed subdivision (c)(3)(A) inquires whether the employer reasonably doubts the appropriateness of the proposed unit, and if so, what classifications or positions remain in dispute, and for the employer to explain its position regarding the dispute. Proposed subsection (c)(3)(B) inquires whether the employer has other reasons to believe that a representation election should not be held in the proposed unit, and if so, for the employer to explain those reasons. The information requested in the two subdivisions is necessary to put the parties on notice of the employer's objections to the petition in the event any exist. Providing this information will also facilitate the Board's investigation and processing of the petition.

**Proposed Section 95090** provides for the Board's investigation of a petition for certification.

Proposed subdivision (a) provides that the Board shall investigate the petition and has broad authority to decide questions raised by the petition by means of conducting a hearing, representation election, or other action that the Board deems necessary. This proposed subdivision is necessary to permit the Board to investigate petitions for certification in order for the Board to discharge its duties. The Board's broad authority for resolving questions raised by the petition is necessary to provide the Board with flexibility in the handling of petitions for certification because the various types of issues that may arise for any given representation petition cannot be anticipated. This proposed subdivision gives the Board appropriate discretion to investigate petitions on a case-by-case basis.

Proposed subdivision (b) enumerates the circumstances under which the Board will dismiss a petition or parts therein. This proposed subdivision is necessary to provide guidelines and notice to the parties regarding the bases in which the Board will determine that a petition or parts therein are deficient or not authorized by statutory or regulatory authority.

Proposed subdivision (b)(1) provides that a petition shall be dismissed if the Board determines that the petitioning employee organization lacks standing to petition for the action requested. This proposed subdivision is necessary to ensure an employee organization has a legally protected interest to petition for the action requested under the statutes and regulatory scheme that PERB has the responsibility to administer and enforce.

Proposed subdivision (b)(2) provides that a petition shall be dismissed if the Board determines that any of the employees in the claimed unit are currently included in any established bargaining unit and are represented by an exclusive representative. This proposed subdivision is necessary because under Government Code section 3524.57

of the JCEERA, only those employee organizations that have been recognized as the exclusive representative of an appropriate unit may represent that unit in employment relations with the Judicial Council.

Proposed subdivision (b)(3) provides that a petition shall be dismissed in part or in whole if the Board determines that a valid election result has been certified affecting the described unit or a subdivision of the unit within the 12 months immediately preceding the date of filing of the petition. This proposed subdivision describes what is colloquially referred to as the “certification bar,” the purpose of which is to provide an insulating period of 12 months to permit the employee organization to represent its unit and negotiate with the employer without interference with its representational rights. This proposed subdivision is necessary because current PERB regulation 32754, which is subject to amendment through this rulemaking package to be applicable to representation petitions arising under JCEERA, requires dismissal of a petition requiring a representation election where an election result has been certified affecting the described unit or portion thereof within the 12 months preceding the date of the filing of the petition.

Proposed subdivision (b)(4) provides that a petition shall be dismissed in part or in whole if the Board determines that the petition was filed either after a notice of hearing, or if there was no hearing, after the Board’s issuance of a notice of intent to conduct an election covering any of the employees in the unit proposed by the petitioner. This proposed subdivision is necessary to prevent interference and delay with a petition for certification filed by another employee organization.

**Proposed Article 2** under proposed Chapter 10, titled Severance Petition, contains regulations governing severance petitions under Government Code section 3524.74 of the JCEERA, where an employee organization seeks to represent an appropriate unit of employees of the Judicial Council that are already included in a larger established unit. This proposed article is necessary to provide clarity to the parties regarding procedures for severance under the JCEERA, and to maintain uniformity in the organizational structure of PERB’s regulations.

**Proposed Section 95100** provides for the filing of a severance petition.

Proposed subdivision (a) permits an employee organization to file a petition if it wishes to become the exclusive representative of an appropriate unit consisting of employees who are already members of a larger established unit represented by an incumbent exclusive representative, and that the petition must be filed with PERB on forms provided by the Board. This proposed subdivision is necessary to initiate the Board’s procedures for severance. The use of the Board’s forms for severance is necessary to elicit all information necessary to facilitate PERB’s communication with the petitioning employee organization, the incumbent exclusive representative, the Judicial Council, and any other interested parties, as well as to provide PERB and the parties with notice of the scope of the severance petition.

Proposed subdivision (b) requires the petition to include proof of majority support of the employees in the unit claimed to be appropriate. Proof of support is defined under Section 32700 of existing PERB regulations. Using the same standard in severance petitions filed under JCEERA as found in PERB regulations covering other labor relations statutes with similar statutory text that PERB administers is necessary to avoid confusion and to maintain consistency in PERB's procedures. (See e.g., Government Code section 3520.5, PERB Regulation 40200 (Dills Act); Government Code section 3524.74 (JCEERA).)

Proposed subdivision (c) requires service and proof of service of the petition. Service and proof of service are necessary to ensure that all parties receive adequate notice of the severance petition and can take any appropriate action. The proof of support is excluded from service on other parties because those documents are confidential under Section 32700 of existing PERB regulations.

**Proposed Section 95110** provides for the posting of the notice of the severance petition. Notice of the petition is necessary to apprise employees of the petition so they may take any appropriate action.

Proposed subdivision (a) provides that the notice of the petition will be posted no later than 15 days following service of the copy of the petition. This proposed subdivision is necessary to provide the employer with certainty as to when it must post the notice of the severance petition, and to maintain consistency in PERB's procedures applicable to labor relations statutes with similar statutory text that PERB administers. (See e.g., Government Code section 3520.5, PERB Regulation 40210 (Dills Act); Government Code section 3524.74 (JCEERA).)

Proposed subdivision (b) provides the manner in which the Judicial Council must provide notice to employees by posting the notice on all employee bulletin boards in each facility where employees of the unit claimed to be appropriate are employed. This proposed subdivision identifying the locations where the notice of the petition is to be posted is necessary as a means to apprise the greatest number of affected employees of the petition so they may take any appropriate action.

Proposed subdivision (c) requires the notice to remain posted for 20 days. This proposed subdivision is necessary to ensure that the notice will remain posted for an adequate period of time to reach affected employees, and to maintain consistency in PERB's procedures applicable to labor relations statutes with similar statutory text that PERB administers. (See e.g., Government Code section 3520.5, PERB Regulation 40210 (Dills Act); Government Code section 3524.74 (JCEERA).)

Proposed subdivision (d) requires the notice of the petition be completed by the Judicial Council prior to its posting, and that a copy of the severance petition be included with the notice when posted. This proposed subdivision is necessary to enable the Board and the parties to effectively monitor and enforce the employer's

obligation to post the notice and petition, and to provide affected employees with relevant information regarding the petition so they may take any appropriate action.

**Proposed Section 95120** provides a process for the Board to determine proof of employee support for severance petitions. Proof of support is defined under Section 32700 of existing PERB regulations

Proposed subdivision (a) requires the employer file with PERB within 20 days of service of the petition a list of employees employed in the claimed unit as of the last date of the payroll period immediately preceding the date the petition was filed. This proposed subdivision is necessary to provide the employer with certainty as to when it must provide the list of employees, and to maintain consistency in PERB's procedures. (See e.g., PERB Regulations 40220 (Dills Act); 33075, 33700 (EERA); 51110, 51680 (HEERA); 61240, 61400 (MMBA); 71110, 71680 (TEERA); 81240, 81400 (Trial Court Act); and 91240, 91400 (Court Interpreter Act).) The list of employees is necessary for the Board to determine whether the petitioner has sufficiently demonstrated proof of support. The employer must provide this information because it is in possession of this information and best-suited to produce it. Limiting the list of employees to those who were on the payroll as of the date the petition was filed allows the Board to determine proof of support at the time the petition was filed.

Proposed subdivision (b) permits the petitioning organization, up to 10 days as determined by the Board, or until the last day of the window period as defined by proposed Section 95000, whichever occurs first, to perfect its proof of support if the initial determination of proof of support is insufficient. This proposed subdivision is necessary because it allows the petitioning employee organization to gather additional proof of employee support rather than requiring it to start the severance process from the beginning when the employee organization is faced with an initial determination of insufficient proof of support, and to maintain consistency in PERB's procedures. (See e.g., PERB Regulations 40220 (Dills Act); 33075, 33700 (EERA); 51110, 51680 (HEERA); 61240, 61400 (MMBA); 71110, 71680 (TEERA); 81240, 81400 (Trial Court Act); and 91240, 91400 (Court Interpreter Act).) The requirement that the time to perfect proof of support must not extend past the last day of the "window period" as defined by proposed Section 95000 is necessary to support the policy furthered by the contract bar, the purpose of which is to balance the need for stability in collective bargaining relationships between the employer and exclusive representative during the term of a memorandum of understanding with protecting the employees' right to free choice of their representative. The window period creates this balance by providing a designated period of time in which a representation petition may be properly filed during the term of a memorandum of understanding.

Proposed subdivision (c) provides a process by which the Board must inform the parties of its final determination of the sufficiency or lack of proof of support. This proposed subdivision is necessary to provide clarity to the parties regarding the Board's obligations in proof of support determinations.

**Proposed Section 95130** concerns the employer's and the exclusive representative of the established unit's response to a severance petition.

Proposed subdivision (a) provides that the employer or exclusive representative of the established unit may file a response supporting or opposing a severance petition within 20 days following the date of service of the petition. This proposed subdivision is necessary to create a reasonable time period in which the employer or exclusive representative may respond to the petition, to put the parties on notice of the employer's or exclusive representative's support or opposition to the petition in the event any exist, and to maintain consistency in PERB's procedures. (See e.g., PERB Regulations 33710 (EERA), 40230 (Dills Act), 51685 (HEERA), 61410 (MMBA), 71685 (TEERA), 81410 (Trial Court Act), and 91410 (Court Interpreter Act.) Providing this information will also facilitate the Board's investigation and processing of the petition. This proposed subdivision also requires service and proof of service of the employer's or exclusive representative's response to the severance petition, which is necessary to ensure that all parties receive adequate notice of the response(s) and can take any appropriate action.

Proposed subdivision (b) requires the response by the employer or exclusive representative of the established unit be in writing and signed by an authorized agent of the responding party, and enumerates information that must be contained in the response. This proposed subdivision is necessary to ensure that the employer or exclusive representative's response contains all relevant information to facilitate the Board's investigation and processing of the petition, and to put the parties on notice of the employer's or exclusive representative's support or opposition to the petition in the event any exist.

Proposed subdivision (b)(1) provides that a copy of the severance petition must be included with the response. Attaching a copy of the petition is necessary to avoid confusion as to which document the employer or the exclusive representative is responding.

Proposed subdivision (b)(2) requires the response to contain the respondent's contact information. This proposed subdivision is necessary to facilitate communication with the employer or the exclusive representative.

Proposed subdivision (b)(3) requires the response to contain a statement confirming or refuting the information contained in the severance petition regarding the date the incumbent exclusive representative was recognized, and the effective date and the expiration date of any current agreement covering employees in the established unit. This proposed subdivision is necessary to permit the parties and PERB to determine whether the petition is appropriately filed. Current Section 32754, which is subject to amendment through this rulemaking package to be applicable to representation petitions arising under the JCEERA, requires dismissal of a petition requiring a representation election where (1) the petition is filed outside of a designated "window

period” for a current collective bargaining agreement between the employer and exclusive representative; or (2) a representation election result has been certified affecting the described unit or a portion thereof within 12 months immediately preceding the date of filing of the petition. The former is colloquially referred to as “the contract bar” and the latter as the “certification bar.” The purpose of the contract bar is to balance the need for stability in collective bargaining relationships between the employer and exclusive representative during the life a collective bargaining agreement with protecting the employees’ right to free choice of their representative. The purpose of the certification bar is to provide an insulating period of 12 months to permit the employee organization to represent its unit and negotiate with the employer without interference with its representational rights.

Proposed subdivision (b)(4) requires the employer and exclusive representative to state its support of or opposition to the unit proposed by the petition. This proposed subdivision is necessary to put the parties on notice of the employer’s or exclusive representative’s support or opposition to the petition in the event any exist. Providing this information will also facilitate the Board’s investigation and processing of the petition.

**Proposed Section 95140** concerns amendments to a severance petition.

Proposed subdivision (a) allows the petitioning employee organization to amend its petition to correct any technical errors or to delete job classifications or positions from the proposed unit prior to the issuance of a PERB notice of representation hearing or, where no hearing is held, prior to the issuance of a Directed Election Order or approval of a Consent Election Agreement. This proposed subdivision is necessary to provide the petitioner with flexibility to correct mistakes that are generally non-substantive in nature rather than requiring the employee organization to start the severance process from the beginning. These types of corrections will most likely not affect the parties’ rights, especially if the Board has yet to determine that a hearing is necessary regarding the petition, or before the issuance of a Directed Election Order or approval of a Consent Election Agreement. The terms “Directed Election Order” and “Consent Election Agreement” are defined under existing PERB Section 32724, which is subject to amendment through this rulemaking package to be applicable to representation elections arising under the JCEERA. This proposed subdivision also requires that the amendment must be filed with PERB on forms provided by the Board, which is necessary to elicit all information necessary to facilitate PERB’s communication with the petitioning employee organization, the incumbent exclusive representative, the Judicial Council, and any other interested parties, as well as to provide PERB and the parties with notice of the scope of the amendment. This proposed subdivision also requires service and proof of service of the amendment to the severance petition, which is necessary to ensure that all parties receive adequate notice and a copy of the amended petition and can take any appropriate action.

Proposed subdivision (b) enumerates additional requirements set forth in proposed subdivisions (b)(1) and (b)(2) for amendments to a severance petition when a petitioning organization seeks to add job classifications or positions to the proposed unit.

Proposed subdivision (b)(1) requires an amendment to add job classifications or positions to a proposed unit may be filed prior to the issuance of a PERB notice of representation hearing or, where no hearing is held, prior to the issuance of a Directed Election Order or approval of a Consent Election Agreement, except if there exists a memorandum of understanding between the employer and the exclusive representative covering any of the employees to be added to the proposed unit, the amendment must be filed during the “window period” defined by proposed Section 95000. This proposed subdivision also requires an amendment to a severance petition to add job classifications or positions to a proposed unit be filed under the procedures provided under existing PERB section 32110 for filing documents with PERB, which is subject to amendment through this rulemaking package to be applicable to representation elections arising under JCEERA. This proposed subdivision is necessary to provide a petitioning employee organization with flexibility to add job classifications or positions to a proposed unit rather than requiring it to start the severance process from the beginning. Allowing an amendment to add job classifications or positions to a proposed unit will most likely not affect the parties’ rights, especially if the Board has yet to determine that a hearing is necessary regarding the petition, or before the issuance of a Directed Election Order or approval of a Consent Election Agreement. The requirement that the amendment be filed within the “window period” is necessary to support the policy furthered by the “contract bar,” the purpose of which is to balance the need for stability in collective bargaining relationships between the employer and exclusive representative during the term of a memorandum of understanding with protecting the employees’ right to free choice of their representative. The window period creates this balance by providing a designated period of time in which a representation petition may be properly filed during the term of a memorandum of understanding. This proposed subdivision is also necessary to ensure a petitioning employee organization comply with PERB’s filing requirements when filing an amendment with PERB.

Proposed subdivision (b)(2) requires that the petitioning employee organization file an amendment with PERB on forms provided by the Board, service and proof of service of the amendment, and the filing of additional proof of service if needed for the petitioner to maintain standing. The requirement that an amendment be filed with PERB on forms provided by the Board is necessary to elicit all information necessary to facilitate PERB’s communication with the petitioning employee organization, the incumbent exclusive representative, the Judicial Council, and any other interested parties, as well as to provide PERB and the parties with notice of the scope of the amendment. The requirement of service and proof of service of the amendment is necessary to ensure that all parties receive adequate notice and a copy of the amended petition and can take any appropriate action. This proposed subdivision requiring that the petitioner provide additional proof of support if needed, is necessary

to ensure that by adding classifications or positions to the proposed unit the petitioner maintains proof of majority support of the employees in the unit claimed to be appropriate, which is the required threshold for a severance petition under proposed Section 95100, subdivision (b).

Proposed subdivision (b)(3) concerns the posting of the notice of the amendment to the severance petition by the employer, which must conform with the requirements of posting the original petition, be posted within 15 days following service of the amendment, and remain posted for 20 days. This proposed subdivision is necessary to provide consistency in posting materials regarding severance petitions under PERB's regulations, to provide the employer with certainty as to when it must post the amendment, and to ensure that the notice will remain posted for an adequate period of time to reach affected employees and to apprise employees of the amendment so they may take any appropriate action. (See e.g., PERB Regulation 40240 (Dills Act); see also PERB Regulations 33100 (EERA), and 51070 (HEERA).)

Proposed subdivision (b)(4) provides that any party may file a response to the amended petition with PERB within 15 days following the service of the Board's determination regarding the adequacy of proof of support unless otherwise directed by the Board. The proposed subdivision further provides that the response must conform with the requirements of proposed Section 95130, which governs responses to severance petitions. This proposed subdivision is necessary to create a reasonable time period in which any party must respond to the amendment but does provide the Board with discretion to adjust the time period as circumstances warrant, and to maintain consistency in PERB's procedures. (See e.g., PERB Regulations 40240 (Dills Act); 33100 (EERA), 51120 (HEERA), 61260 (MMBA), 71120 (TEERA), 81260 (Trial Court Act), and 91260 (Court Interpreter Act).) Providing this information will also facilitate the Board's investigation and processing of the petition. The requirement under this subdivision that any response conform with the requirements of proposed section 95130 is necessary for the reasons set forth in proposed section 95130, and to provide consistency under PERB regulations for severance petitions.

Proposed subdivision (c) provides that any amendments to the petition to correct technical errors or to add or delete job classifications or positions from a proposed unit following the issuance of the notice of hearing are at the discretion of the hearing officer. Once the notice of hearing has issued, the parties have begun preparing in earnest to litigate a dispute involving the petition. Allowing the petitioning employee organization to amend the petition at this late stage has the potential to disrupt the proceedings by creating undue delay. Accordingly, this subdivision is necessary to provide the hearing officer with discretion to balance the benefit of amending the petition at this late stage against any impediment caused by the amendment. Similarly, giving the hearing officer discretion to determine whether amendments must be posted allows the hearing officer to balance the benefit of posting notice of the amendment against any impediment caused by the posting. This proposed subdivision also subjects the hearing officer's discretion to approve an amendment to add job classifications to the requirement that sufficient proof of support is provided as



needed, as discussed above under proposed subdivision (b)(2), in order for the petitioning organization to maintain standing.

**Proposed Section 95150** provides for the withdrawal of a severance petition. This proposed section is necessary to permit parties to withdraw a petition that they no longer wish to pursue. This proposed section also requires that the withdrawal of a severance petition must be filed with PERB, and service and proof of service of the withdrawal, which is necessary to ensure that PERB and all parties receive adequate notice and a copy of the withdrawal and can take any appropriate action.

**Proposed Section 95160** provides for the Board's investigation of a severance petition.

Proposed subdivision (a) provides that the Board shall investigate the severance petition and has broad authority to decide questions raised by the petition by means of conducting a hearing, representation election, or other action that the Board deems necessary. This proposed subdivision is necessary to permit the Board to investigate severance petitions in order for the Board to discharge its duties. The Board's broad authority for resolving questions raised by the petition is necessary to provide the Board with flexibility in the handling of severance petitions because the various types of issues that may arise for any given representation petition cannot be anticipated. This proposed subdivision gives the Board appropriate discretion to investigate severance petitions on a case-by-case basis.

Proposed subdivision (b) enumerates the circumstances under which the Board will dismiss a severance petition or parts therein. This proposed subdivision is necessary to provide guidelines and notice to the parties regarding the bases in which the Board will determine that a petition or parts therein are deficient or not authorized by statutory or regulatory authority.

Proposed subdivision (b)(1) provides that a severance petition shall be dismissed if the Board determines that the petitioning employee organization has no standing to petition for the action requested. This proposed subdivision is necessary to ensure an employee organization has a legally protected interest to petition for the action requested under the statutes and regulatory scheme that PERB has the responsibility to administer and enforce.

Proposed subdivision (b)(2) provides that a severance petition shall be dismissed if the Board determines that there is a current memorandum of understanding in effect between the employer and the exclusive representative of any employees covered by the petition unless the petition is filed during the "window period" defined by proposed Section 95000. The requirement that the severance petition be filed within the "window period" is necessary to support the policy furthered by the "contract bar," the purpose of which is to balance the need for stability in collective bargaining relationships between the employer and exclusive representative during the term of a memorandum of understanding with protecting the employees' right to free choice of

their representative. The “window period” creates this balance by providing a designated period of time in which a representation petition may be properly filed during the term of a memorandum of understanding. Proposed subdivision (b)(2) also provides that a severance petition may be filed at the end of third year of a memorandum of understanding, but there is no time restriction for filing a petition when a memorandum of understanding has been in effect for three years or more as the duration of the contract bar is limited by statute and existing PERB regulations to three years. (See e.g., PERB Regulations 40260 (Dills Act), 51140 (HEERA), 61420 (MMBA), 71140 (TEERA), 81420 (Trial Court Act), and 91420 (Court Interpreter Act).) This proposed subdivision is necessary to avoid confusion and to maintain consistency in PERB’s procedures for the labor relations statutes it administers.

Proposed subdivision (b)(3) provides that a petition shall be dismissed if the Board determines that a valid election result has been certified affecting the described unit or a subdivision of the unit within the 12 months immediately preceding the date of filing of the petition. This proposed subdivision describes what is colloquially referred to as the “certification bar,” the purpose of which is to provide an insulating period of 12 months to permit the employee organization to represent its unit and negotiate with the employer without interference with its representational rights. This proposed subdivision is necessary because existing Section 32754, which is subject to amendment through this rulemaking package to be applicable to representation petitions arising under the JCEERA, requires dismissal of a petition requiring a representation election where an election result has been certified affecting the described unit or portion thereof within the 12 months preceding the date of the filing of the petition.

**Proposed Article 3** under proposed Chapter 10 for the JCEERA, titled Representation Election, contains regulations governing representation elections conducted by PERB under Government Code section 3524.74 of the JCEERA. This article is necessary to provide clarity to the parties regarding procedures for representation elections under the JCEERA, and to maintain uniformity in the organizational structure of PERB’s regulations.

**Proposed Section 95200** concerns the providing of notice to interested parties when the Board makes the determination to conduct a representation election. This proposed section further provides that a Board decision directing a representation election will constitute notice to interested parties that the Board intends to conduct a representation election. This proposed section is necessary to ensure that all parties receive adequate notice of PERB’s intent to conduct a representation election and can take any appropriate action.

**Proposed Section 95210** provides a procedure for employee organizations to file an intervention to appear on the ballot for a representation election.

Proposed subdivision (a) permits an employee organization to file an intervention to appear on a ballot within 20 days following the issuance by the Board of a notice of

intent to conduct an election pursuant to proposed Section 95200. The requirement that an intervention be filed within 20 days following the issuance by the Board of a notice of intent to conduct an election is necessary to provide the intervening employee organization and other parties with certainty as to when an intervention to appear on the ballot in a representation election must be filed, and to maintain consistency in PERB's procedures applicable to labor relations statutes with similar statutory text that PERB administers. (See e.g., Government Code section 3520.5, PERB Regulation 40310 (Dills Act); Government Code section 3524.74 (JCEERA).) This proposed subdivision further requires that the intervention be filed with PERB on forms provided by the Board and that the intervention be accompanied by proof of support, which is defined under existing Section 32700, of at least 30 percent of the employees in the appropriate unit. The requirement that the employee organization use the forms provided by the Board for intervention is necessary to elicit all information necessary to facilitate PERB's communication with the intervening employee organization and all other parties. Proof of 30 percent support is the standard threshold of employee support that an employee organization must make when filing a petition for certification. Using the same threshold for interventions filed under the JCEERA as found in PERB regulations covering other labor relations statutes with similar statutory text that PERB administers is necessary to avoid confusion and to maintain consistency in PERB's procedures. (See e.g., Government Code section 3520.5 (Dills Act); PERB Regulation 40310; Government Code section 3524.74 (JCEERA); see also PERB Regulations 33070 (EERA), 61210 (MMBA), 81210 (Trial Court Act), and 91210 (Court Interpreter Act).)

Proposed subdivision (b) requires service, exclusive of the proof of support, and proof of service of the intervention. Service and proof of service are necessary to ensure that all parties receive adequate notice of the intervention and can take any appropriate action. The proof of support is excluded from service on other parties because those documents are confidential under Section 32700 of existing PERB regulations.

**Proposed Section 95220** provides a process for the Board to determine proof of employee support for representation elections and intervention. Proof of support is defined under Section 32700 of existing PERB regulations.

Proposed subdivision (a) requires the employer file with PERB within 20 days of issuance by PERB of a notice of intent to conduct an election a list of employees employed in the appropriate unit as of the last date of the payroll period immediately preceding the date of issuance of the notice of intent to conduct election. This proposed subdivision is necessary to provide the employer with certainty as to when it must provide the list of employees, and to maintain consistency in PERB's procedures applicable to labor relations statutes with similar statutory text that PERB administers. (See e.g., Government Code section 3520.5, PERB Regulation 40320 (Dills Act); Government Code section 3524.74 (JCEERA); see also PERB Regulations 33085 (EERA), 51320 (HEERA), and 71320 (TEERA).) The list of employees is necessary for the Board to determine whether the petitioner has sufficiently demonstrated proof

of support. The Judicial Council must provide this information because it is in possession of this information and best-suited to produce it. Limiting the list of employees to those who were on the payroll as of the date the petition was filed allows the Board to determine proof of support at the time the notice of intent to conduct an election was issued.

Proposed subdivision (b) permits the intervening employee organization, up to 10 days as determined by the Board, to perfect its proof of support if the initial determination of proof of support is insufficient. This proposed subdivision is necessary because it allows the intervening employee organization to gather additional proof of employee support rather than requiring it to start the intervention process from the beginning when the employee organization is faced with an initial determination of insufficient proof of support, and to maintain consistency in PERB's procedures applicable to labor relations statutes with similar statutory text that PERB administers. (See e.g., Government Code section 3520.5, PERB Regulation 40320 (Dills Act); Government Code section 3524.74 (JCEERA); see also PERB Regulations 33085 (EERA), 51320 (HEERA), and 71320 (TEERA).)

Proposed subdivision (c) provides a process by which the Board must inform the parties of its final determination of the sufficiency or lack of proof of support. This proposed subdivision is necessary to provide clarity to the parties regarding the Board's obligations in proof of support determinations.

**Proposed Section 95230** concerns the conduct of elections for representation matters under the JCEERA. PERB regulations contain procedures in Chapter 1, Subchapter 6, Article 2 for the conduct of elections. Proposed section 95230 states that all elections conducted in JCEERA matters will be conducted according to Chapter 1, Subchapter 6, Article 2. Using existing regulations to conduct elections is necessary to avoid confusion and to maintain consistency in PERB's procedures across all of the labor relations statutes it administers.

#### **b. Amendments to the Text of Existing Sections**

**Section 32085** provides a definition of the term "workday" under each of the statutes administered by PERB.

Subdivision (h) amends this section to provide a definition for the term "workday" for matters arising under the JCEERA. Certain PERB regulations require parties to engage in specific conduct for a specified period of "workdays," such as posting a notice of a petition for certification. Adding a definition of the term "workday" for matters arising under JCEERA provides clarity to the parties regarding their obligations.

**Section 32100** identifies the regulations contained in Chapter 1 that apply to PERB proceedings conducted under the several labor relations statutes administered by PERB. Chapter 1 contains eight subchapters: (1) Internal Procedure; (2) Definitions

and General Provisions; (3) Hearings; (4) Decisions of the Board Itself; (5) Unfair Practice Proceedings; (6) Representation Proceedings; (7) Compliance; and (9) State Mediation and Conciliation Service. The vast majority of Chapter 1 contains provisions that apply to all PERB proceedings. For example, requirements for filing documents with PERB or the manner in which final Board orders are enforced. Where Chapter 1 does not apply to a given PERB proceeding, Section 32100 so states.

The proposed amendment to subdivision (a) extends the application of existing PERB regulations under Chapter 1 to proceedings conducted under the JCEERA, and to proposed Chapter 10, which governs representation matters under the JCEERA. This proposed amendment is necessary to provide clarity to the parties regarding existing PERB regulations in Chapter 1 that apply to proceedings conducted under the JCEERA.

Subdivision (f) specifies several chapters within PERB's regulations that do not apply to services provided by mediators or conciliators pursuant to Government Code sections 3600 and 3601. The proposed amendment to subdivision (f) extends its application to proposed Chapter 10 regulations specific to JCEERA representation matters. This proposed amendment is necessary to provide clarity to the parties that regulations applicable to representation matters under the JCEERA are not applicable to services provided by mediators or conciliators.

**Section 32115** specifies the regional offices for filing documents with PERB in representation matters that are not filed electronically. The proposed amendment to subdivision (d) adds a reference to the JCEERA to extend its application to representation matters filed under the JCEERA. This proposed amendment is necessary to provide clarity to the public regarding the appropriate PERB regional office for filing representation matters.

**Section 32120** provides for the filing of written agreements or memorandums of understanding with the Board. The proposed amendment to Section 32120 extends its application to agreements entered into under the JCEERA. PERB must at times review the terms and conditions of an agreement in carrying out its duties. PERB needs the authority to demand that an employer provide a written agreement or memorandum of understanding upon request because there are times when the employer will not provide the information voluntarily. It is incumbent upon the employer to bear the responsibility of production because it is in a better position than employee organizations or individual employees to maintain and reproduce records, such as written agreements or memorandums of understanding. This proposed amendment is necessary to facilitate the resolution of unfair practice charges and representation proceedings arising under the JCEERA, and to provide notice to the parties that agreements made pursuant to the JCEERA may be requested by the Board.

**Section 32130** addresses the computation of time for filings with PERB. Subdivision (a) includes an exception to the general rule for computation of time. The exception is

based on Section 32776, which addresses when PERB must summarily dismiss a decertification petition under EERA, the Dills Act, HEERA, and TEERA. One instance is when the decertification petition is filed outside the designated “window period” in a memorandum of understanding between the employer and exclusive representative. The “window period” is a specifically defined period of time for each statutory scheme. Another instance is when the decertification petition is filed within 12 months of a representation election result being certified. The proposed amendment to subdivision (a) includes a reference to proposed subdivision (g) in Section 32776, which addresses when PERB must summarily dismiss a decertification petition filed under the JCEERA, including when it is filed outside a designated “window period” as defined in proposed Section 95000, or within 12 months of certification of a representation election. This proposed amendment is necessary to provide clarity to the parties regarding an exception to the application of this section for filings under the JCEERA, and to maintain consistency in PERB’s treatment of representation matters across all of the statutory schemes over which the Board has jurisdiction.

**Section 32147** provides for expediting matters before the Board. Subdivision (a) enumerates specific representation matters that may be expedited. These matters are typically expedited because it is in the best interest of all parties to quickly resolve any matters involving employee choice of their representative. The proposed amendment to subdivision (a) adds a reference to proposed Section 95030, which governs the filing of petitions for certification under the JCEERA, and proposed Section 95100, which governs the filing of severance petitions under the JCEERA. This proposed amendment is necessary because it will allow for the timely resolution of these types of petitions and provides consistency in PERB’s procedures.

**Section 32155** concerns the circumstances under which a Board agent or Board member will be disqualified to hear a case. Subdivision (f) provides that parties to cases arising under the MMBA, the Dills Act, EERA, HEERA, the Trial Court Act, the Court Interpreter Act, and TEERA may include the matter of the Board’s determination regarding a motion for recusal in a writ of extraordinary relief seeking judicial review of the Board’s decision on the merits. This proposed amendment to subdivision (f) extends the application of this subdivision to the JCEERA by including a reference to Government Code section 3524.73, which governs a party’s right to file a petition for a writ of extraordinary relief seeking judicial review under the JCEERA. The proposed amendment is necessary to permit a party that is aggrieved by the Board’s decision under the JCEERA in a matter regarding recusal to challenge the Board’s decision in the same manner as the other statutes referenced, and to maintain consistency in PERB’s procedures.

**Section 32305** provides that proposed decisions become final if no timely exceptions are filed. Subdivision (b) states that in representation matters arising under the EERA, the Dills Act, HEERA, MMBA, TEERA, the Trial Court Act, and the Court Interpreter Act, a Board agent’s decision becomes final unless the Board itself issues a decision not later than 180 days from the date exceptions were filed with the Board. The proposed amendment to subdivision (b) extends the application of this subdivision to

the JCEERA by including a reference to proposed Section 95030, which governs the filing of petitions for certification under the JCEERA, and proposed Section 95100, which governs the filing of severance petitions under the JCEERA. This proposed amendment is necessary to ensure that representation matters are treated consistently across all of the statutory schemes that PERB administers and to avoid confusion by the parties to representation matters arising under the JCEERA.

**Section 32602** provides for the processing of unfair practice charges. Subdivision (a) provides that alleged violations of statutes within PERB's jurisdiction will be processed as unfair practice charges. The proposed amendment to subdivision (a) provides that alleged violations of the JCEERA will also be processed as unfair practice charges. Government Code sections 3524.52, subdivision (a), and 3524.55 provide PERB with jurisdiction over the JCEERA, and the authority to process alleged violations of the JCEERA as unfair practice charges. This proposed amendment to subdivision (a) is necessary to clarify that PERB will exercise its jurisdiction over alleged violations of the JCEERA by processing such allegations as unfair practice charges, and to apprise parties as to the proper means of seeking redress with PERB for alleged violations of JCEERA.

Subdivision (c) provides that alleged violations by an employer or exclusive representative of the public notice requirements set forth in Government Code sections 3523, 3547, 3547.5, 3595, and Public Utilities Code section 99569 will be processed as unfair practice charges and may be filed by any affected member of the public. The proposed amendment to subdivision (c) adds a reference to Government Code section 3524.78, which sets forth public notice requirements under the JCEERA. The proposed amendment to subdivision (c) is necessary to clarify that a member of the public has standing to allege a violation of Government Code section 3524.78, and that PERB will exercise its jurisdiction over alleged violations by processing such allegations as unfair practice charges.

**Section 32620** concerns the processing of unfair practice charges by Board agents. Subdivision (b)(5), in part, prohibits the issuance of a complaint where the conduct alleged to violate the applicable Act is also prohibited by the parties' written agreement, until the grievance machinery or other remedies have been exhausted under Government Code sections 3514.5 (Dills Act), 3541.5 (EERA), 3563.2 (HEERA), 71639.1(c) (Trial Court Act), 71825(c) (Court Interpreter Act), or Public Utilities Code section 99561.2 (TEERA). The proposed amendment to subdivision (b)(5) adds a reference to Government Code section 3524.55 of the JCEERA, which provides that the Board may not issue a complaint against conduct also prohibited by the provisions of the parties' agreement until the grievance machinery of the agreement has been exhausted. The proposed amendment is necessary to extend its application to matters arising under the JCEERA, and to maintain consistency in the processing of unfair practice charges across all of the statutory schemes over which the Board maintains jurisdiction.

**Section 32661** concerns the filing of repugnancy claims for unfair practice charge cases that were deferred to arbitration because the dispute was covered by the parties' written agreement.

Subdivision (a) provides that an unfair practice charge may be filed based on a claim that a settlement or arbitration award resulting from a deferred unfair practice charge is repugnant to the applicable Act. The amendment to subdivision (a) adds a reference to the JCEERA and is necessary to extend its application to matters arising under the JCEERA and to maintain consistency in the processing of unfair practice charges across all of the statutory schemes over which the Board maintains jurisdiction.

**Section 32720** concerns when an election will be conducted in representation matters under EERA, the Dills Act, HEERA, and TEERA. The proposed amendment to this section adds a reference to proposed Chapter 10, Subchapter 1, which implements representation procedures for the JCEERA. This proposed amendment is necessary to ensure that the Board has authority to order that an election be conducted in a disputed representation matter arising under the JCEERA.

**Section 32721** defines the term "parties" in representation matters under EERA, the Dills Act, HEERA, and TEERA. The proposed amendment to this section extends the definition of "parties" to include employees, employee organizations, and the Judicial Council employer in representation matters arising under the JCEERA. This proposed amendment is necessary to provide clarity to the parties and ensure that the provisions in Chapter 1 governing representation proceedings apply to matters arising under the JCEERA.

**Section 32754** concerns when the Board must dismiss a petition requiring a representation election. Under EERA, the Dills Act, HEERA, and TEERA, a petition requiring a representation election must be dismissed if either of the following conditions exist: (1) the petition is filed outside of a designated "window period" for a current collective bargaining agreement between the employer and exclusive representative; or (2) a representation election result has been certified affecting the described unit or a portion thereof within 12 months immediately preceding the date of filing of the petition. The former is colloquially referred to as "the contract bar" and the latter as the "certification bar." The purpose of the contract bar is to balance the need for stability in collective bargaining relationships between the employer and exclusive representative during the life of a collective bargaining agreement with protecting the employees' right to free choice of their representative. The purpose of the certification bar is to provide an insulating period of 12 months to permit the employee organization to represent its unit and negotiate with the employer without interference with its representational rights.

Proposed subdivision (e) includes language to ensure that the contract bar and certification bar apply to representation petitions arising under the JCEERA. This proposed amendment is necessary to ensure consistency in the way PERB treats



representation petitions filed under the various statutes over which it maintains jurisdiction, and to promote labor stability during the life of a collective bargaining agreement and after an exclusive representative is newly-elected.

**Section 32772** provides for notification to employees in a voting unit of a decertification petition. Subdivision (c) sets forth the time that a notice of decertification petition must be posted. The proposed amendment to subdivision (c) includes language requiring a notice of a decertification petition filed under the JCEERA to be posted for a minimum of 20 days. This proposed amendment is necessary to ensure that employees have sufficient time to view the notice and take any action related to the notice, and to maintain consistency in PERB's procedures applicable to the labor relations statutes PERB administers.

**Section 32776** concerns the Board's procedure for investigating decertification petitions. The Board must summarily dismiss a petition requiring a representation election under the EERA, the Dills Act, HEERA, and TEERA if either of the following conditions exist: (1) the petition is filed outside of a designated "window period" for a current collective bargaining agreement between the employer and exclusive representative; or (2) a representation election result has been certified affecting the described unit or a portion thereof within 12 months immediately preceding the date of filing of the petition. The former is colloquially referred to as "the contract bar" and the latter as the "certification bar." The purpose of the contract bar is to balance the need for stability in collective bargaining relationships between the employer and exclusive representative during the life a collective bargaining agreement with protecting the employees' right to free choice of their representative. The purpose of the certification bar is to provide an insulating period of 12 months to permit the employee organization to represent its unit and negotiate with the employer without interference with its representational rights.

Proposed subdivision (g) includes language to ensure that the contract bar and certification bar apply to petitions for decertification filed under the JCEERA. This language is necessary to ensure consistency in the way PERB treats petitions for decertification filed under the various statutes over which it maintains jurisdiction and in order to promote labor stability during the life of a collective bargaining agreement and after an exclusive representative is newly-elected.

Proposed subdivision (h) (formerly subdivision (g)), defines "window period." The proposed amendment to the text of this subdivision adds a reference to proposed Section 95000, which defines the "window period" for matters filed under the JCEERA. This proposed amendment is necessary to provide clarity to the parties by ensuring that the term "window period" is defined consistently across the sections that effect representation matters arising under the JCEERA.

**Section 32781** provides for the filing of petitions to modify existing employee units and the manner in which employee units may be modified. Subdivision (b)(1) permits, in relevant part, the deletion of classifications or positions that are not covered by

TEERA, EERA, HEERA, or the Dills Act. The proposed amendment to subdivision (b)(1) adds a reference to the JCEERA. This proposed amendment is necessary to extend the subdivision's application to matters arising under the JCEERA, and to maintain consistency in the processing of unit modification petitions across the statutory schemes over which the Board maintains jurisdiction.

Subdivision (b)(4) permits, in relevant part, the deletion of classifications or positions not subject to subdivision (b)(1), that are not appropriate to the unit or not covered by TEERA, EERA, HEERA, or the Dills Act. The proposed amendment to subdivision (b)(4) adds a reference to the JCEERA. This proposed amendment is necessary to extend the subdivision's application to matters arising under the JCEERA, and to maintain consistency in the processing of unit modification petitions across the statutory schemes over which the Board maintains jurisdiction.

Subdivision (b)(4)(C) provides for the filing of unit modification petitions under subdivision (b)(4), provided that the petition is filed during the "window period" as defined for EERA, the Dills Act, HEERA, and TEERA. The proposed amendment to subdivision (b)(4)(C) adds a reference to proposed Section 95000, which defines the "window period" for matters filed under the JCEERA. This proposed amendment is necessary to provide clarity to the parties by ensuring that the term "window period" is defined consistently across the sections that effect representation matters arising under the JCEERA.

**Section 32792** concerns the procedures for parties to request the Board determine the existence of impasse and appointment of a mediator. Subdivision (a) makes clear that this Section applies only to the Dills Act, EERA, and HEERA. The proposed amendment to subdivision (a) adds a reference to the JCEERA. This proposed amendment is necessary to extend the subdivision's application to matters arising under the JCEERA, and to maintain consistency in the processing of impasse requests across the statutory schemes over which the Board maintains jurisdiction to determine impasse and appoint a mediator.

### **c. Amendments to the Authority and Reference Only**

**Section 31001** provides for meetings of the Public Employment Relations Board. The proposed changes do not make any changes to the text of this section, but only update the authority and reference citations. This update is necessary to reflect the Legislature's extension of the Board's responsibilities to include jurisdiction over matters arising under the JCEERA.

**Section 32020** provides a definition for the term "Board." The proposed changes do not make any changes to the text of this section, but only update the authority and reference citations. This update is necessary to reflect the Legislature's extension of the Board's responsibilities to include jurisdiction over matters arising under the JCEERA.

**Section 32030** provides a definition for the term “Board itself.” The proposed changes do not make any changes to the text of this section, but only update the authority and reference citations. This update is necessary to reflect the Legislature’s extension of the Board’s responsibilities to include jurisdiction over matters arising under the JCEERA.

**Section 32040** provides a definition for the term “Executive Director.” The proposed changes do not make any changes to the text of this section, but only update the authority and reference citations. This update is necessary to reflect the Legislature’s extension of the Board’s responsibilities to include jurisdiction over matters arising under the JCEERA.

**Section 32050** provides a definition for the term “General Counsel.” The proposed changes do not make any changes to the text of this section, but only update the authority and reference citations. This update is necessary to reflect the Legislature’s extension of the Board’s responsibilities to include jurisdiction over matters arising under the JCEERA.

**Section 32055** provides a definition for the term “Chief Administrative Law Judge.” The proposed changes do not make any changes to the text of this section, but only update the authority and reference citations. This update is necessary to reflect the Legislature’s extension of the Board’s responsibilities to include jurisdiction over matters arising under the JCEERA.

**Section 32060** provides a definition for the term “headquarters office.” The proposed changes do not make any changes to the text of this section, but only update the authority and reference citations. This update is necessary to reflect the Legislature’s extension of the Board’s responsibilities to include jurisdiction over matters arising under the JCEERA.

**Section 32075** provides a definition for the term “regional office.” The proposed changes do not make any changes to the text of this section, but only update the authority and reference citations. This update is necessary to reflect the Legislature’s extension of the Board’s responsibilities to include jurisdiction over matters arising under the JCEERA.

**Section 32080** provides a definition for the term “day.” The proposed changes do not make any changes to the text of this section, but only update the authority and reference citations. This update is necessary to reflect the Legislature’s extension of the Board’s responsibilities to include jurisdiction over matters arising under the JCEERA.

**Section 32090** provides a definition for the term “e-PERB.” The proposed changes do not make any changes to the text of this section, but only update the authority and reference citations. This update is necessary to reflect the Legislature’s extension of

the Board's responsibilities to include jurisdiction over matters arising under the JCEERA.

**Section 32091** provides a definition for the term "electronic filing." The proposed changes do not make any changes to the text of this section, but only update the authority and reference citations. This update is necessary to reflect the Legislature's extension of the Board's responsibilities to include jurisdiction over matters arising under the JCEERA.

**Section 32092** provides a definition for the term "electronic signature" as the term is used for the formal submission of documents with PERB. The proposed changes do not make any changes to the text of this section, but only update the authority and reference citations. This update is necessary to reflect the Legislature's extension of the Board's responsibilities to include jurisdiction over matters arising under the JCEERA.

**Section 32093** provides a definition for the term "electronic service" where authorized or required by statute or within PERB's regulations. The proposed changes do not make any changes to the text of this section, but only update the authority and reference citations. This update is necessary to reflect the Legislature's extension of the Board's responsibilities to include jurisdiction over matters arising under the JCEERA.

**Section 32094** provides a definition for the term "filed" as the term is used for the formal submission of documents with PERB. The proposed changes do not make any changes to the text of this section, but only update the authority and reference citations. This update is necessary to reflect the Legislature's extension of the Board's responsibilities to include jurisdiction over matters arising under the JCEERA.

**Section 32105** provides for the severability of PERB's regulations. The proposed changes do not make any changes to the text of this section, but only update the authority and reference citations. This update is necessary to reflect the Legislature's extension of the Board's responsibilities to include jurisdiction over matters arising under the JCEERA.

**Section 32110** sets forth the requirements that govern the way parties electronically file documents with PERB through e-PERB, as that term is defined by section 32090. The proposed changes do not make any changes to the text of this section, but only update the authority and reference citations. This update is necessary to reflect the Legislature's extension of the Board's responsibilities to include jurisdiction over matters arising under the JCEERA.

**Section 32111** authorizes the Board to direct parties to use electronic means to post and thereby notify remote workers that a representation petition has been filed. The proposed changes do not make any changes to the text of this section, but only update the authority and reference citations. This update is necessary to reflect the

Legislature's extension of the Board's responsibilities to include jurisdiction over matters arising under the JCEERA.

**Section 32125** describes the filing requirements for documents with confidential information. The proposed changes do not make any changes to the text of this section, but only update the authority and reference citations. This update is necessary to reflect the Legislature's extension of the Board's responsibilities to include jurisdiction over matters arising under the JCEERA.

**Section 32132** concerns the requirements for an extension of time in which to file documents with the Board. The proposed changes do not make any changes to the text of this section, but only update the authority and reference citations. This update is necessary to reflect the Legislature's extension of the Board's responsibilities to include jurisdiction over matters arising under the JCEERA.

**Section 32135** concerns the requirements for documents that are not filed electronically. The proposed changes do not make any changes to the text of this section, but only update the authority and reference citations. This update is necessary to reflect the Legislature's extension of the Board's responsibilities to include jurisdiction over matters arising under the JCEERA.

**Section 32136** concerns late filing requirements. The proposed changes do not make any changes to the text of this section, but only update the authority and reference citations. This update is necessary to reflect the Legislature's extension of the Board's responsibilities to include jurisdiction over matters arising under the JCEERA.

**Section 32140** concerns service requirements. The proposed changes do not make any changes to the text of this section, but only update the authority and reference citations. This update is necessary to reflect the Legislature's extension of the Board's responsibilities to include jurisdiction over matters arising under the JCEERA.

**Section 32143** concerns the placement of PERB cases in abeyance. The proposed changes do not make any changes to the text of this section, but only update the authority and reference citations. This update is necessary to reflect the Legislature's extension of the Board's responsibilities to include jurisdiction over matters arising under the JCEERA.

**Section 32145** concerns the waiver of time period requirements to expedite a matter. The proposed changes do not make any changes to the text of this section, but only update the authority and reference citations. This update is necessary to reflect the Legislature's extension of the Board's responsibilities to include jurisdiction over matters arising under the JCEERA.

**Section 32149** concerns the issuance of investigative subpoenas. The proposed changes do not make any changes to the text of this section, but only update the authority and reference citations. This update is necessary to reflect the Legislature's

extension of the Board's responsibilities to include jurisdiction over matters arising under the JCEERA.

**Section 32150** concerns the issuance of subpoenas. The proposed changes do not make any changes to the text of this section, but only update the authority and reference citations. This update is necessary to reflect the Legislature's extension of the Board's responsibilities to include jurisdiction over matters arising under the JCEERA.

**Section 32162** concerns the confidentiality of Board investigations. The proposed changes do not make any changes to the text of this section, but only update the authority and reference citations. This update is necessary to reflect the Legislature's extension of the Board's responsibilities to include jurisdiction over matters arising under the JCEERA.

**Section 32164** concerns an application for joinder of parties. The proposed changes do not make any changes to the text of this section, but only update the authority and reference citations. This update is necessary to reflect the Legislature's extension of the Board's responsibilities to include jurisdiction over matters arising under the JCEERA.

**Section 32165** concerns an application to join a representation hearing as a limited party. The proposed changes do not make any changes to the text of this section, but only update the authority and reference citations. This update is necessary to reflect the Legislature's extension of the Board's responsibilities to include jurisdiction over matters arising under the JCEERA.

**Section 32166** concerns an application to join a representation hearing as a full party. The proposed changes do not make any changes to the text of this section, but only update the authority and reference citations. This update is necessary to reflect the Legislature's extension of the Board's responsibilities to include jurisdiction over matters arising under the JCEERA.

**Section 32168** concerns the conduct of hearings. The proposed changes do not make any changes to the text of this section, but only update the authority and reference citations. This update is necessary to reflect the Legislature's extension of the Board's responsibilities to include jurisdiction over matters arising under the JCEERA.

**Section 32169** concerns the taking of depositions. The proposed changes do not make any changes to the text of this section, but only update the authority and reference citations. This update is necessary to reflect the Legislature's extension of the Board's responsibilities to include jurisdiction over matters arising under the JCEERA.

**Section 32170** concerns the authority of a Board agent conducting a hearing. The proposed changes do not make any changes to the text of this section, but only update the authority and reference citations. This update is necessary to reflect the Legislature's extension of the Board's responsibilities to include jurisdiction over matters arising under the JCEERA.

**Section 32175** concerns the rules of evidence in representation cases. The proposed changes do not make any changes to the text of this section, but only update the authority and reference citations. This update is necessary to reflect the Legislature's extension of the Board's responsibilities to include jurisdiction over matters arising under the JCEERA.

**Section 32176** concerns the rules of evidence in unfair practice cases. The proposed changes do not make any changes to the text of this section, but only update the authority and reference citations. This update is necessary to reflect the Legislature's extension of the Board's responsibilities to include jurisdiction over matters arising under the JCEERA.

**Section 32178** concerns the burden of proof in unfair practice cases. The proposed changes do not make any changes to the text of this section, but only update the authority and reference citations. This update is necessary to reflect the Legislature's extension of the Board's responsibilities to include jurisdiction over matters arising under the JCEERA.

**Section 32180** concerns the rights of parties in PERB hearings. The proposed changes do not make any changes to the text of this section, but only update the authority and reference citations. This update is necessary to reflect the Legislature's extension of the Board's responsibilities to include jurisdiction over matters arising under the JCEERA.

**Section 32185** concerns ex parte communications with Board agents. The proposed changes do not make any changes to the text of this section, but only update the authority and reference citations. This update is necessary to reflect the Legislature's extension of the Board's responsibilities to include jurisdiction over matters arising under the JCEERA.

**Section 32190** concerns filing and rulings on motions. The proposed changes do not make any changes to the text of this section, but only update the authority and reference citations. This update is necessary to reflect the Legislature's extension of the Board's responsibilities to include jurisdiction over matters arising under the JCEERA.

**Section 32200** concerns the appeal of rulings on motions and other interlocutory matters. The proposed changes do not make any changes to the text of this section, but only update the authority and reference citations. This update is necessary to

reflect the Legislature's extension of the Board's responsibilities to include jurisdiction over matters arising under the JCEERA.

**Section 32205** concerns requests for continuances of a formal hearing. The proposed changes do not make any changes to the text of this section, but only update the authority and reference citations. This update is necessary to reflect the Legislature's extension of the Board's responsibilities to include jurisdiction over matters arising under the JCEERA.

**Section 32206** concerns the production of statements of witnesses after testimony. The proposed changes do not make any changes to the text of this section, but only update the authority and reference citations. This update is necessary to reflect the Legislature's extension of the Board's responsibilities to include jurisdiction over matters arising under the JCEERA.

**Section 32207** concerns stipulation of facts for purposes of hearing. The proposed changes do not make any changes to the text of this section, but only update the authority and reference citations. This update is necessary to reflect the Legislature's extension of the Board's responsibilities to include jurisdiction over matters arising under the JCEERA.

**Section 32209** concerns the procedure for correction of hearing transcripts. The proposed changes do not make any changes to the text of this section, but only update the authority and reference citations. This update is necessary to reflect the Legislature's extension of the Board's responsibilities to include jurisdiction over matters arising under the JCEERA.

**Section 32210** concerns the filing of informational briefs and oral argument. The proposed changes do not make any changes to the text of this section, but only update the authority and reference citations. This update is necessary to reflect the Legislature's extension of the Board's responsibilities to include jurisdiction over matters arising under the JCEERA.

**Section 32212** concerns briefs and oral argument. The proposed changes do not make any changes to the text of this section, but only update the authority and reference citations. This update is necessary to reflect the Legislature's extension of the Board's responsibilities to include jurisdiction over matters arising under the JCEERA.

**Section 32215** concerns issuance of proposed decisions. The proposed changes do not make any changes to the text of this section, but only update the authority and reference citations. This update is necessary to reflect the Legislature's extension of the Board's responsibilities to include jurisdiction over matters arising under the JCEERA.



**Section 32220** concerns contemptuous conduct by a party or a party's agent. The proposed changes do not make any changes to the text of this section, but only update the authority and reference citations. This update is necessary to reflect the Legislature's extension of the Board's responsibilities to include jurisdiction over matters arising under the JCEERA.

**Section 32230** concerns the refusal of a witness to testify. The proposed changes do not make any changes to the text of this section, but only update the authority and reference citations. This update is necessary to reflect the Legislature's extension of the Board's responsibilities to include jurisdiction over matters arising under the JCEERA.

**Section 32295** concerns ex parte communications with members of the Board itself or legal advisers to Board members. The proposed changes do not make any changes to the text of this section, but only update the authority and reference citations. This update is necessary to reflect the Legislature's extension of the Board's responsibilities to include jurisdiction over matters arising under the JCEERA.

**Section 32300** concerns the filing of exceptions to Board agent decisions. The proposed changes do not make any changes to the text of this section, but only update the authority and reference citations. This update is necessary to reflect the Legislature's extension of the Board's responsibilities to include jurisdiction over matters arising under the JCEERA.

**Section 32310** provides for the filing of responses to exceptions. The proposed changes do not make any changes to the text of this section, but only update the authority and reference citations. This update is necessary to reflect the Legislature's extension of the Board's responsibilities to include jurisdiction over matters arising under the JCEERA.

**Section 32312** provides for the filing of a reply brief in support of exceptions. The proposed changes do not make any changes to the text of this section, but only update the authority and reference citations. This update is necessary to reflect the Legislature's extension of the Board's responsibilities to include jurisdiction over matters arising under the JCEERA.

**Section 32315** provides for oral argument on exceptions. The proposed changes do not make any changes to the text of this section, but only update the authority and reference citations. This update is necessary to reflect the Legislature's extension of the Board's responsibilities to include jurisdiction over matters arising under the JCEERA.

**Section 32320** concerns issuance of decisions by the Board itself. The proposed changes do not make any changes to the text of this section, but only update the authority and reference citations. This update is necessary to reflect the Legislature's

extension of the Board's responsibilities to include jurisdiction over matters arising under the JCEERA.

**Section 32325** concerns the remedial powers of the Board. The proposed changes do not make any changes to the text of this section, but only update the authority and reference citations. This update is necessary to reflect the Legislature's extension of the Board's responsibilities to include jurisdiction over matters arising under the JCEERA.

**Section 32350** provides for a definition of administrative decisions. The proposed changes do not make any changes to the text of this section, but only update the authority and reference citations. This update is necessary to reflect the Legislature's extension of the Board's responsibilities to include jurisdiction over matters arising under the JCEERA.

**Section 32360** concerns requirements for appeals of administrative decisions. The proposed changes do not make any changes to the text of this section, but only update the authority and reference citations. This update is necessary to reflect the Legislature's extension of the Board's responsibilities to include jurisdiction over matters arising under the JCEERA.

**Section 32370** concerns requests for a stay following an appeal. The proposed changes do not make any changes to the text of this section, but only update the authority and reference citations. This update is necessary to reflect the Legislature's extension of the Board's responsibilities to include jurisdiction over matters arising under the JCEERA.

**Section 32375** provides for responses to administrative appeals. The proposed changes do not make any changes to the text of this section, but only update the authority and reference citations. This update is necessary to reflect the Legislature's extension of the Board's responsibilities to include jurisdiction over matters arising under the JCEERA.

**Section 32380** provides for administrative decisions that are not appealable. The proposed changes do not make any changes to the text of this section, but only update the authority and reference citations. This update is necessary to reflect the Legislature's extension of the Board's responsibilities to include jurisdiction over matters arising under the JCEERA.

**Section 32400** provides that a motion for reconsideration is not required in order to exhaust administrative remedies. The proposed changes do not make any changes to the text of this section, but only update the authority and reference citations. This update is necessary to reflect the Legislature's extension of the Board's responsibilities to include jurisdiction over matters arising under the JCEERA.

**Section 32410** provides for the filing of requests for reconsideration. The proposed changes do not make any changes to the text of this section, but only update the authority and reference citations. This update is necessary to reflect the Legislature's extension of the Board's responsibilities to include jurisdiction over matters arising under the JCEERA.

**Section 32450** concerns the filing of requests for injunctive relief. The proposed changes do not make any changes to the text of this section, but only update the authority and reference citations. This update is necessary to reflect the Legislature's extension of the Board's responsibilities to include jurisdiction over matters arising under the JCEERA.

**Section 32455** concerns the investigation of requests for injunctive relief. The proposed changes do not make any changes to the text of this section, but only update the authority and reference citations. This update is necessary to reflect the Legislature's extension of the Board's responsibilities to include jurisdiction over matters arising under the JCEERA.

**Section 32460** provides for recommendations by the General Counsel concerning requests for injunctive relief. The proposed changes do not make any changes to the text of this section, but only update the authority and reference citations. This update is necessary to reflect the Legislature's extension of the Board's responsibilities to include jurisdiction over matters arising under the JCEERA.

**Section 32465** provides for decisions by the Board itself concerning requests for injunctive relief. The proposed changes do not make any changes to the text of this section, but only update the authority and reference citations. This update is necessary to reflect the Legislature's extension of the Board's responsibilities to include jurisdiction over matters arising under the JCEERA.

**Section 32470** concerns the authority of the General Counsel regarding requests for injunctive relief where a quorum of the Board itself is unavailable. The proposed changes do not make any changes to the text of this section, but only update the authority and reference citations. This update is necessary to reflect the Legislature's extension of the Board's responsibilities to include jurisdiction over matters arising under the JCEERA.

**Section 32500** concerns procedures for requesting judicial review of a decision in a representation case. The proposed changes do not make any changes to the text of this section, but only update the authority and reference citations. This update is necessary to reflect the Legislature's extension of the Board's responsibilities to include jurisdiction over matters arising under the JCEERA.

**Section 32612** specifies in which regional office unfair practice charge filings should be made. The proposed changes do not make any changes to the text of this section, but only update the authority and reference citations. This update is necessary to

reflect the Legislature's extension of the Board's responsibilities to include jurisdiction over matters arising under the JCEERA.

**Section 32615** concerns the information required to be included in an unfair practice charge. The proposed changes do not make any changes to the text of this section, but only update the authority and reference citations. This update is necessary to reflect the Legislature's extension of the Board's responsibilities to include jurisdiction over matters arising under the JCEERA.

**Section 32621** concerns the amending of unfair practice charges. The proposed changes do not make any changes to the text of this section, but only update the authority and reference citations. This update is necessary to reflect the Legislature's extension of the Board's responsibilities to include jurisdiction over matters arising under the JCEERA.

**Section 32625** concerns the withdrawal of unfair practice charges. The proposed changes do not make any changes to the text of this section, but only update the authority and reference citations. This update is necessary to reflect the Legislature's extension of the Board's responsibilities to include jurisdiction over matters arising under the JCEERA.

**Section 32630** concerns the dismissal of unfair practice charges. The proposed changes do not make any changes to the text of this section, but only update the authority and reference citations. This update is necessary to reflect the Legislature's extension of the Board's responsibilities to include jurisdiction over matters arising under the JCEERA.

**Section 32635** provides for the appeal of dismissals of unfair practice charges. The proposed changes do not make any changes to the text of this section, but only update the authority and reference citations. This update is necessary to reflect the Legislature's extension of the Board's responsibilities to include jurisdiction over matters arising under the JCEERA.

**Section 32640** concerns the issuance of complaints in unfair practice charge cases. The proposed changes do not make any changes to the text of this section, but only update the authority and reference citations. This update is necessary to reflect the Legislature's extension of the Board's responsibilities to include jurisdiction over matters arising under the JCEERA.

**Section 32644** provides for the filing of an answer in unfair practice charges where a complaint issues. The proposed changes do not make any changes to the text of this section, but only update the authority and reference citations. This update is necessary to reflect the Legislature's extension of the Board's responsibilities to include jurisdiction over matters arising under the JCEERA.

**Section 32645** concerns non-prejudicial errors in unfair practice charges and related documents. The proposed changes do not make any changes to the text of this section, but only update the authority and reference citations. This update is necessary to reflect the Legislature's extension of the Board's responsibilities to include jurisdiction over matters arising under the JCEERA.

**Section 32647** concerns amendments to complaints in unfair practice charge cases before hearing. The proposed changes do not make any changes to the text of this section, but only update the authority and reference citations. This update is necessary to reflect the Legislature's extension of the Board's responsibilities to include jurisdiction over matters arising under the JCEERA.

**Section 32648** concerns amendments to complaints in unfair practice charge cases during a hearing. The proposed changes do not make any changes to the text of this section, but only update the authority and reference citations. This update is necessary to reflect the Legislature's extension of the Board's responsibilities to include jurisdiction over matters arising under the JCEERA.

**Section 32649** concerns the filing of answers to amendments to complaints in unfair practice charge cases. The proposed changes do not make any changes to the text of this section, but only update the authority and reference citations. This update is necessary to reflect the Legislature's extension of the Board's responsibilities to include jurisdiction over matters arising under the JCEERA.

**Section 32650** concerns the conduct of settlement conferences in unfair practice charge cases. The proposed changes do not make any changes to the text of this section, but only update the authority and reference citations. This update is necessary to reflect the Legislature's extension of the Board's responsibilities to include jurisdiction over matters arising under the JCEERA.

**Section 32680** concerns the conduct of hearings on unfair practice charges. The proposed changes do not make any changes to the text of this section, but only update the authority and reference citations. This update is necessary to reflect the Legislature's extension of the Board's responsibilities to include jurisdiction over matters arising under the JCEERA.

**Section 32690** concerns notice of hearing in unfair practice charge cases. The proposed changes do not make any changes to the text of this section, but only update the authority and reference citations. This update is necessary to reflect the Legislature's extension of the Board's responsibilities to include jurisdiction over matters arising under the JCEERA.

**Section 32700** concerns the requirements for valid proof of employee support in representation proceedings. The proposed changes do not make any changes to the text of this section, but only update the authority and reference citations. This update

is necessary to reflect the Legislature's extension of the Board's responsibilities to include jurisdiction over matters arising under the JCEERA.

**Section 32722** concerns the preparation of ballots in representation matters. The proposed changes do not make any changes to the text of this section, but only update the authority and reference citations. This update is necessary to reflect the Legislature's extension of the Board's responsibilities to include jurisdiction over matters arising under the JCEERA.

**Section 32724** concerns service on the parties of a Directed Election Order or Consent Election Agreement regarding the conduct of an election, and notification to employees in a voting unit of an election. The proposed changes do not make any changes to the text of this section, but only update the authority and reference citations. This update is necessary to reflect the Legislature's extension of the Board's responsibilities to include jurisdiction over matters arising under the JCEERA.

**Section 32726** concerns the employer's obligation to file a voter list with PERB. The proposed changes do not make any changes to the text of this section, but only update the authority and reference citations. This update is necessary to reflect the Legislature's extension of the Board's responsibilities to include jurisdiction over matters arising under the JCEERA.

**Section 32728** concerns the requirements for an employee to be eligible to vote in an election. The proposed changes do not make any changes to the text of this section, but only update the authority and reference citations. This update is necessary to reflect the Legislature's extension of the Board's responsibilities to include jurisdiction over matters arising under the JCEERA.

**Section 32730** concerns the parties' right to station observers at an election. The proposed changes do not make any changes to the text of this section, but only update the authority and reference citations. This update is necessary to reflect the Legislature's extension of the Board's responsibilities to include jurisdiction over matters arising under the JCEERA.

**Section 32732** concerns challenges to the eligibility of a voter. The proposed changes do not make any changes to the text of this section, but only update the authority and reference citations. This update is necessary to reflect the Legislature's extension of the Board's responsibilities to include jurisdiction over matters arising under the JCEERA.

**Section 32734** concerns the parties' right to station an authorized agent at the ballot count and the tallying of ballots. The proposed changes do not make any changes to the text of this section, but only update the authority and reference citations. This update is necessary to reflect the Legislature's extension of the Board's responsibilities to include jurisdiction over matters arising under the JCEERA.

**Section 32735** concerns the resolution of challenged ballots. The proposed changes do not make any changes to the text of this section, but only update the authority and reference citations. This update is necessary to reflect the Legislature's extension of the Board's responsibilities to include jurisdiction over matters arising under the JCEERA.

**Section 32736** provides for a runoff election when no ballot choice receives a majority of votes. The proposed changes do not make any changes to the text of this section, but only update the authority and reference citations. This update is necessary to reflect the Legislature's extension of the Board's responsibilities to include jurisdiction over matters arising under the JCEERA.

**Section 32738** concerns party objections to the conduct of an election. The proposed changes do not make any changes to the text of this section, but only update the authority and reference citations. This update is necessary to reflect the Legislature's extension of the Board's responsibilities to include jurisdiction over matters arising under the JCEERA.

**Section 32739** concerns a Board agent's powers and duties concerning objections to the conduct of an election. The proposed changes do not make any changes to the text of this section, but only update the authority and reference citations. This update is necessary to reflect the Legislature's extension of the Board's responsibilities to include jurisdiction over matters arising under the JCEERA.

**Section 32740** concerns the withdrawal of objections to the conduct of an election. The proposed changes do not make any changes to the text of this section, but only update the authority and reference citations. This update is necessary to reflect the Legislature's extension of the Board's responsibilities to include jurisdiction over matters arising under the JCEERA.

**Section 32742** provides for hearing procedures to resolve objections to the conduct of an election or challenges to ballots. The proposed changes do not make any changes to the text of this section, but only update the authority and reference citations. This update is necessary to reflect the Legislature's extension of the Board's responsibilities to include jurisdiction over matters arising under the JCEERA.

**Section 32744** provides procedure for parties to file exceptions to a Board agent's proposed decision on objections to the conduct of an election or challenged ballots. The proposed changes do not make any changes to the text of this section, but only update the authority and reference citations. This update is necessary to reflect the Legislature's extension of the Board's responsibilities to include jurisdiction over matters arising under the JCEERA.

**Section 32746** concerns the revised tally of ballots following a ruling on challenged ballots. The proposed changes do not make any changes to the text of this section, but only update the authority and reference citations. This update is necessary to

reflect the Legislature's extension of the Board's responsibilities to include jurisdiction over matters arising under the JCEERA.

**Section 32748** permits a party to file objections to a revised tally of ballots. The proposed changes do not make any changes to the text of this section, but only update the authority and reference citations. This update is necessary to reflect the Legislature's extension of the Board's responsibilities to include jurisdiction over matters arising under the JCEERA.

**Section 32750** concerns the certification of results of an election or certification of the exclusive representative. The proposed changes do not make any changes to the text of this section, but only update the authority and reference citations. This update is necessary to reflect the Legislature's extension of the Board's responsibilities to include jurisdiction over matters arising under the JCEERA.

**Section 32752** concerns when the Board may stay an election pending the resolution of an unfair practice charge relating to the voting unit. The proposed changes do not make any changes to the text of this section, but only update the authority and reference citations. This update is necessary to reflect the Legislature's extension of the Board's responsibilities to include jurisdiction over matters arising under the JCEERA.

**Section 32761** provides for the filing of petitions by employee organizations requesting amendment of certification. The proposed changes do not make any changes to the text of this section, but only update the authority and reference citations. This update is necessary to reflect the Legislature's extension of the Board's responsibilities to include jurisdiction over matters arising under the JCEERA.

**Section 32762** concerns an employer's response to a petition for amendment of certification. The proposed changes do not make any changes to the text of this section, but only update the authority and reference citations. This update is necessary to reflect the Legislature's extension of the Board's responsibilities to include jurisdiction over matters arising under the JCEERA.

**Section 32763** concerns the Board's investigation of a petition for amendment of certification. The proposed changes do not make any changes to the text of this section, but only update the authority and reference citations. This update is necessary to reflect the Legislature's extension of the Board's responsibilities to include jurisdiction over matters arising under the JCEERA.

**Section 32770** provides for the filing of decertification petitions. The proposed changes do not make any changes to the text of this section, but only update the authority and reference citations. This update is necessary to reflect the Legislature's extension of the Board's responsibilities to include jurisdiction over matters arising under the JCEERA.



**Section 32774** concerns the process for the Board to determine proof of employee support for decertification petitions. The proposed changes do not make any changes to the text of this section, but only update the authority and reference citations. This update is necessary to reflect the Legislature's extension of the Board's responsibilities to include jurisdiction over matters arising under the JCEERA.

**Section 32783** concerns the filing of responses to petitions for unit modification. The proposed changes do not make any changes to the text of this section, but only update the authority and reference citations. This update is necessary to reflect the Legislature's extension of the Board's responsibilities to include jurisdiction over matters arising under the JCEERA.

**Section 32784** provides the process by which the Board will determine proof of employee support for petitions for unit modification. The proposed changes do not make any changes to the text of this section, but only update the authority and reference citations. This update is necessary to reflect the Legislature's extension of the Board's responsibilities to include jurisdiction over matters arising under the JCEERA.

**Section 32786** concerns the Board's investigation and disposition of a petition for unit modification. The proposed changes do not make any changes to the text of this section, but only update the authority and reference citations. This update is necessary to reflect the Legislature's extension of the Board's responsibilities to include jurisdiction over matters arising under the JCEERA.

**Section 32791** provides for the selection by the parties of a mediator. The proposed changes do not make any changes to the text of this section, but only update the authority and reference citations. This update is necessary to reflect the Legislature's extension of the Board's responsibilities to include jurisdiction over matters arising under the JCEERA.

**Section 32793** concerns the procedure for the Board to determine the existence of impasse. The proposed changes do not make any changes to the text of this section, but only update the authority and reference citations. This update is necessary to reflect the Legislature's extension of the Board's responsibilities to include jurisdiction over matters arising under the JCEERA.

**Section 32795** concerns subsequent requests by parties to the Board to determine the existence of impasse and appointment of a mediator after the Board's determination that an impasse does not exist. The proposed changes do not make any changes to the text of this section, but only update the authority and reference citations. This update is necessary to reflect the Legislature's extension of the Board's responsibilities to include jurisdiction over matters arising under the JCEERA.

**Section 32980** concerns enforcement of compliance with final decisions of the Board. The proposed changes do not make any changes to the text of this section, but only

update the authority and reference citations. This update is necessary to reflect the Legislature's extension of the Board's responsibilities to include jurisdiction over matters arising under the JCEERA.

## **TECHNICAL, THEORETICAL, AND/OR EMPIRICAL STUDY, REPORTS, OR DOCUMENTS RELIED UPON**

PERB did not rely upon any other technical, theoretical, or empirical studies, report or documents in proposing the adoption of these regulations.

## **ECONOMIC IMPACT ASSESSMENT** (Government Code section 11346.3(b))

As a result of the enactment of Assembly Bill 83 (Stats. 2017, Ch. 835), effective January 1, 2018, PERB is responsible for the administration and enforcement of the Judicial Council Employer-Employee Relations Act (JCEERA), which is codified at Chapter 10.4 of Title 1 of the Government Code, section 3524.50 et seq. The proposed regulations implement procedures for PERB's administration and enforcement of the JCEERA, thereby protecting the procedural and substantive rights of certain employees of the Judicial Council, employee organizations, and the Judicial Council, as set forth in the JCEERA.

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

### Creation or Elimination of Jobs Within the State of California

The JCEERA confers collective bargaining rights for certain public sector employees of the Judicial Council, a public sector employer. The proposed regulations are designed to provide procedures for the filing, processing, and determination of unfair practice charges alleging violations of the JCEERA, and for representation matters, that are necessary for PERB's administration and enforcement of the JCEERA. In clarifying and interpreting Government Code section 3524.50 et seq., with the proposed regulations, no jobs in California will be created or eliminated.

### Creation of New Businesses or Elimination of Existing Businesses Within the State of California

The JCEERA confers collective bargaining rights for certain public sector employees of the Judicial Council, a public sector employer. The proposed regulations are designed to provide procedures for the filing, processing, and determination of unfair practice charges alleging violations of the JCEERA, and for representation matters, that are necessary for PERB's administration and enforcement of the JCEERA. In clarifying and interpreting Government Code section 3524.50 et seq., with the proposed regulations, no new businesses will be created or existing businesses eliminated in California, and the ability of California businesses to compete with businesses in other states will not be impacted.

## Expansion of Businesses Within the State of California

The JCEERA confers collective bargaining rights for certain public sector employees of the Judicial Council, a public sector employer. The proposed regulations are designed to provide procedures for the filing, processing, and determination of unfair practice charges alleging violations of the JCEERA, and representation matters, that are necessary for PERB's administration and enforcement of the JCEERA. In clarifying and interpreting Government Code section 3524.50 et seq., with the proposed regulations, no existing businesses in California will be expanded.

PERB will continue to investigate the potential for economic impact throughout this rulemaking process.

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

The proposed regulations are designed to provide procedures for the filing, processing, and determination of unfair practice charges alleging violations of the JCEERA, and for representation matters for the Judicial Council, public sector employee organizations, and employees of the Judicial Council, that are necessary for PERB's administration and enforcement of the JCEERA. Through these proposed regulations, PERB will ensure improvement of public sector labor relations by providing information and clarity to parties regarding PERB's process, and aid efficiency in PERB's resolution of labor disputes, which will promote full communication between the Judicial Council and its employees in resolving disputes over wages, hours, and other terms and conditions of employment. The proposed regulatory action will not adversely affect the health and welfare of California residents, worker safety, or the State's environment. The proposed regulatory action will further the policies underlying the JCEERA by providing a process to expediently resolve alleged violations of the JCEERA. California residents' general welfare will be benefitted by stable collective bargaining and dispute resolution, which translates to continuous delivery of the essential services that the Judicial Council and its employees provide to California's communities.

## **INFORMATION RELIED UPON TO SUPPORT PERB'S INITIAL DETERMINATION THAT THE PROPOSED REGULATORY ACTION WILL NOT HAVE A SIGNIFICANT ADVERSE ECONOMIC IMPACT ON BUSINESS**

The JCEERA, along with the other public sector labor relations statutes that PERB is charged with administering and enforcing, set forth the rights and obligations of entities and individuals operating in the public sector. Because the scope of the JCEERA, and the other public sector labor relations statutes that PERB is charged with administering and enforcing is limited to the public sector, PERB has initially determined that the proposed regulatory action implementing the JCEERA will not have a significant adverse economic impact on business.

**REASONABLE ALTERNATIVES TO THE PROPOSED REGULATORY ACTION THAT WOULD LESSEN ANY ADVERSE IMPACT ON SMALL BUSINESS**

PERB has not identified any adverse impacts on small businesses as a result of these proposed regulations, and has not identified any alternatives that would lessen any adverse impact on small business. Thus, no such alternative has been proposed.

**MANDATED USE OF SPECIFIC TECHNOLOGIES OR EQUIPMENT**

PERB's proposed regulations do not mandate the use of any specific technologies or equipment.