

**BUREAU OF STATE AUDITS  
555 CAPITOL MALL, SUITE 300  
SACRAMENTO, CA 95814**

September 28, 2009

**NOTICE OF MODIFICATIONS TO TEXT OF PROPOSED REGULATIONS**

On July 31, 2009, a Notice of Proposed Rulemaking regarding the Voters FIRST Act was published in the California Regulatory Notice Register. In addition to written comments received by the Bureau of State Audits (“bureau”) during the 45-day comment period, a regulatory hearing was held on September 14, 2009.

After careful consideration of all comments received, the bureau has modified the proposed regulations, and pursuant to Government Code section 11346.8, subdivision (c), the bureau is providing this Notice of Modifications to Text of Proposed Regulations along with the **revised text of the regulations**. In addition, the bureau is providing a **memorandum regarding the revisions to the proposed regulations** clarifying and implementing the Voters FIRST Act.

Written comments on the proposed modifications must be submitted to the bureau no later than **5:00 p.m. on Tuesday, October 13, 2009**. Please send written comments to:

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555 Capitol Mall, Suite 300  
Sacramento, CA 95814  
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**AVAILABILITY AND LOCATION OF THE FINAL STATEMENT OF REASONS  
AND RULEMAKING FILE**

All the information upon which the proposed regulations are based is contained in the rulemaking file located at 555 Capitol Mall, Suite 300, Sacramento, CA 95814. The rulemaking file is available for public inspection by making a request to the contact person listed above.

You may obtain a copy of the final statement of reasons once it has been prepared, by making a written request to the contact person listed above.

**WEBSITE ACCESS**

Materials regarding this proposed rulemaking are available online at [www.bsa.ca.gov/redistricting](http://www.bsa.ca.gov/redistricting).

**TITLE 2. ADMINISTRATION  
DIVISION 10. BUREAU OF STATE AUDITS**

**CHAPTER 1. REDISTRICTING**

**SUB-CHAPTER 1. DEFINITIONS**

**60800 - ~~60828~~60829**

**§ 60800. Ability to Be Impartial**

(a) “Ability to be impartial” means that although an applicant may have strong views, and may have participated in social or political causes, the applicant has a-the capacity and willingness, while serving as a member of the commission, to set aside his or her personal views and all of the following considerations ~~when serving as a commissioner~~ in order to evaluate information with an open mind and make decisions that are fair to everyone affected, including the establishment of legislative and State Board of Equalization districts that are in compliance with the United States Constitution, the Voting Rights Act of 1965 (commencing with section 1971 of title 42 of the United States Code), withand the criteria set forth in subdivision (d) of section 2 of Article XXI of the California Constitution:

- (1) Personal interests including personal financial interests.
- (2) Biases for or against any individuals, groups, or geographical areas.
- (3) Support for or opposition to any candidates, political parties, or social or political causes.

(b) An applicant may demonstrate an ability to be impartial through a description of that ability and both of the following:

(1) Having no personal, family, or financial relationships, commitments, or aspirations that ~~might a reasonable person would consider likely have a tendency~~ to improperly influence someone making a redistricting decision.

(2) Occupational, academic, volunteer, or other life experiences that show an ability to set aside his or her personal interests, political opinions, and group allegiances to achieve a broad objective.

[Note: Authority cited: *Section 8546, Government Code*. Reference: *Section 8252, Government Code*.]

Go to: Memorandum Number 8 Relating to Revisions to Proposed Regulations Implementing the Voters First Act

**§ 60801. Applicant**

“Applicant” means a person who has submitted an application to serve on the commission.

[Note: Authority cited: *Section 8546, Government Code*. Reference: *Section 8252, Government Code*.]

### **§ 60802. Application Materials**

“Application materials” means the electronic and other documents collected by the bureau and the panel from applicants and from members of the public commenting on applicants during the application process. Application materials shall include, but need not be limited to, the following:

(a) Applications and supplemental applications.

(b) Supporting materials for an application or a supplemental application, including letters of recommendation.

(c) Written public comments and responses to such comments submitted in accordance with title 2, California Code of Regulations section 60846.

[Note: Authority cited: *Section 8546, Government Code*. Reference: *Section 8252, Government Code*.]

### **§ 60803. Application Year**

“Application year” means the calendar year 2010 or any year ending in “0” thereafter.

[Note: Authority cited: *Section 8546, Government Code*. Reference: *Section 8252, Government Code*.]

### **§ 60804. Appointed to Federal or State Office**

“Appointed to” a federal or state office means a person has been appointed to a federal or state office by the Governor, any member of the Legislature, or any member of the State Board of Equalization, or has served in an appointed position at the pleasure of the Governor, a member of the Legislature, or a member of the State Board of Equalization. A person has been appointed to an office regardless of whether the appointment was subsequently confirmed by the Legislature.

[Note: Authority cited: *Section 8546, Government Code*. Reference: *Section 8252, Government Code*.]

Go to: Memorandum Number 8 Relating to Revisions to Proposed Regulations Implementing the Voters First Act

### **§ 60805. Appreciation for California’s Diverse Demographics and Geography**

(a) “Appreciation for California’s diverse demographics and geography” means all of the following:

(1) An understanding that California’s population consists of individuals sharing certain demographic characteristics that may ~~relate-reflect to~~ their voting preferences, including race, ethnicity, gender, sexual orientation, and ~~level of income~~economic status.

(2) An understanding that the people of California reside in many different localities with distinct geographic characteristics that may ~~relate to~~reflect the voting preferences of the residents of those localities, including urban, rural, industrial, agricultural, coastal, inland, arid, and temperate.

(3) A recognition that California benefits by having ~~meaningful-effective~~ participation in the electoral process by registered voters of all demographic characteristics and residing in all geographic locations, including participation by those voters who in the past, as a consequence of sharing certain demographic characteristics, such as race and ethnicity, have had less opportunity than other members of the electorate to participate in the electoral process.

(b) An applicant may demonstrate an appreciation for California’s diverse demographics and geography through a description of that appreciation and through occupational, academic, volunteer, or other life experiences that show this appreciation, such as:

(1) Working on ~~a-one or more projects of statewide or local concern affecting~~ that involve or affect Californians ~~of having~~ different backgrounds ~~and or residing from in~~ different areas, and therefore having differing interests, yet achieving ~~a results that are~~ acceptable to these different Californians.

(2) Studying the voting behavior of Californians in various areas of the state for the purpose of improving the effectiveness of the electoral process.

(3) Traveling throughout ~~the state~~California and meeting with ~~a broad range of individuals in~~ people having different backgrounds, in order to recruit them for employment or some other endeavor, or to build consensus on some issue ~~or idea of statewide concern~~.

[Note: Authority cited: *Section 8546, Government Code*. Reference: *Section 8252, Government Code*.]

Go to: [Memorandum Number 8 Relating to Revisions to Proposed Regulations Implementing the Voters First Act](#)

## **§ 60806. Bona Fide Relationship**

“Bona fide relationship established through blood or legal relation” means an existing bona fide relationship between a person and his or her spouse, registered domestic partner, parent, child, sibling, or in-law. A relationship is existing if it has not been terminated by death or dissolution. A relationship is bona fide if it is so substantial in nature that it includes any of the following within the preceding 12 months: cohabitation for a period or periods cumulating 30 days or more; shared ownership of any real or personal property having a cumulative value of \$1,000 or more, or either party to the relationship providing a financial benefit to the other having a cumulative value of \$1,000 or more. A “financial benefit” includes anything of value, whether tangible or intangible, and includes any payment, gift, discount, or rendering of services.

[Note: Authority cited: *Section 8546, Government Code*. Reference: *Section 8252, Government Code*.]

**§ 60807. Bureau**

“Bureau” means the Bureau of State Audits.

**§ 60808. Bureau’s Website**

“Bureau’s website” means the official state government website for the Bureau of State Audits or any other website that the State Auditor designates for use during the application process for selecting members of the commission.

[Note: Authority cited: *Section 8546, Government Code*. Reference: *Section 8252, Government Code*.]

**§ 60809. Campaign Committee**

“Campaign committee of a candidate for elective federal or state office” means the following:

(a) As applied to a candidate for elective federal office, any “authorized committee” of that candidate as defined in section 431(5) of title 2 of the United States Code.

(b) As applied to a candidate for elective state office, any “controlled committee” of the candidate as defined in section 82016 of the Government Code, including any controlled ballot measure committee.

[Note: Authority cited: *Section 8546, Government Code*. Reference: *Section 8252, Government Code*.]

**§ 60810. Candidate**

“Candidate” for federal or state office means a candidate for federal or state elective office.

[Note: Authority cited: *Section 8546, Government Code*. Reference: *Section 8252, Government Code*.]

**§ ~~60810~~60811. Commissioner**

“Commissioner” means a member of the Citizens Redistricting Commission.

[Note: Authority cited: *Section 8546, Government Code*. Reference: *Section 8252, Government Code*.]

**§ ~~60811~~60812. Conflict of Interest**

“Conflict of interest” means having engaged in any of the activities or having had any of the relationships specified in subdivision (a)(2) of section 8252 of the Government Code that require disqualification from serving as either a member of the commission or a member of the panel.

[Note: Authority cited: *Section 8546, Government Code*. Reference: *Section 8252, Government Code*.]

### ~~§ 60812. Congressional, State, or Local Candidate For Elective Public Office~~

~~—“Congressional, state, or local candidate for elective public office” means the following:~~

~~(a) A congressional candidate for elective public office means any candidate for the office of Senator or Representative in the Congress of the United States elected from California.~~

~~(b) A state candidate for elective public office means any candidate for “elective state office” in California, as defined in section 82024 of the Government Code.~~

~~(c) A local candidate for elective public office means any candidate for a regional, county, municipal, district, or judicial office in California that is filled by an election.~~

~~[Note: Authority cited: *Section 8546, Government Code*. Reference: *Section 8252, Government Code*.]~~

### **§ 60813. Consultant**

“Consultant,” means any person who has entered into an agreement to provide consulting services to a political party, campaign committee, the Governor, a member of the Legislature, a member of Congress elected from California, or a member of the State Board of Equalization, either directly or through a business entity in which the person holds at least a ten percent ownership interest. “Consulting services” means expert advice or personal services related to conducting campaign activities or to holding congressional or state office.

[Note: Authority cited: *Section 8546, Government Code*. Reference: *Section 8252, Government Code*.]

### **§ 60814. Contributed \$2,000 or More To Any Congressional, State, or Local Candidate For Elective Public Office in Any Year**

“Contributed \$2,000 or more to any congressional, state, or local candidate for elective public office in any year” means the following:

(a) “Contributed \$2,000 or more” means having made contributions defined as follows:

(1) With respect to contributions to a congressional candidate, contributions as defined in section 431(5) of title 2 of the United States Code.

(2) With respect to contributions to a state or local candidate, contributions as defined in section 82015 of the Government Code.

(3) Notwithstanding paragraph (2) of this subdivision, contributions shall not include payments made by a candidate for a local elective public office to support his or her own candidacy for that office.

(4) Except as provided in paragraph (3), a contribution shall be attributed to a contributor in the manner provided by the federal or California laws that govern the contribution.

(b) A congressional candidate for elective public office means any candidate for the office of Senator or Representative in the Congress of the United States elected from California.

(c) A state candidate for elective public office means any candidate for “elective state office” in California, as defined in section 82024 of the Government Code.

(d) A local candidate for elective public office means any candidate for a regional, county, municipal, district, or judicial office in California that is filled by an election.

(e) “In any year” means the period January 1 through December 31 within a single calendar year.

[Note: Authority cited: Section 8546, Government Code. Reference: Section 8252, Government Code.]

Go to: Memorandum Number 8 Relating to Revisions to Proposed Regulations Implementing the Voters First Act

### § ~~60814~~60815. Diversity

“Diversity” means the variety in the racial, ethnic, geographic, economic, and gender characteristics of the population of California.

[Note: Authority cited: Section 8546, Government Code. Reference: Section 2, Article XXI, California Constitution; Section 8252, Government Code.]

Go to: Memorandum Number 8 Relating to Revisions to Proposed Regulations Implementing the Voters First Act

### § ~~60815~~60816. Federal Office

“Federal office” means the office of Senator or Representative in the Congress of the United States elected from California.

[Note: Authority cited: Section 8546, Government Code. Reference: Section 8252, Government Code.]

### § ~~60816~~60817. In-law

“In-law” means any of the following:

(a) ~~the~~ The father, mother, or sibling of a person’s spouse or registered domestic partner.

(b) The spouse or registered domestic partner of a person’s child.

[Note: Authority cited: *Section 8546, Government Code*. Reference: *Section 8252, Government Code*.]

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**§ ~~60817~~60818. Legislative Leader**

“Legislative leader” means the President Pro Tempore of the Senate, the Minority Floor Leader of the Senate, the Speaker of the Assembly, or the Minority Floor Leader of the Assembly.

[Note: Authority cited: *Section 8546, Government Code*. Reference: *Section 8252, Government Code*.]

**§ ~~60818~~60819. Most Qualified Applicants**

“Most qualified applicants” means those applicants who satisfy all of the following requirements:

(a) Are lawfully registered voters in the State of California who, by the ~~time of their appointment~~date the first eight members of the Commission are selected by the State Auditor, will have been continuously registered in California with the same political party or continuously registered in California as unaffiliated with ~~no a~~ political party for at least the five preceding years.

(b) Have voted in at least two of the ~~past~~last three statewide general elections held immediately prior to the date of application.

(c) Do not have a conflict of interest.

(d) In the judgment of the panel are more suited to serving on the commission than other applicants based on their relevant analytical skills, ability to be impartial, and appreciation for California’s diverse demographics and geography.

[Note: Authority cited: *Section 2, Article XXI, California Constitution; Section 8546, Government Code*. Reference: *Section 8252, Government Code*.]

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**§ ~~60819~~60820. Paid Congressional, Legislative, or Board of Equalization Staff**

“Paid congressional, legislative, or Board of Equalization staff” means any person who is either of the following:

(a) ~~employed~~Employed by, and receiving compensation from the Congress of the United States to provide services to a member of Congress elected from California, ~~;~~

(b) Employed by and receiving compensation from the Legislature, or the State Board of Equalization.

[Note: Authority cited: *Section 8546, Government Code*. Reference: *Section 8252, Government Code*.]

§ ~~60820~~60821. **Paid Consultant**

“Paid consultant” means a person who, pursuant to a contract, provides expert advice or personal services related to conducting campaign activities or holding office, and who receives compensation for providing such advice or services.

[Note: Authority cited: *Section 8546, Government Code*. Reference: *Section 8252, Government Code*.]

§ ~~60821~~60822. **Political Party**

“Political party” means a political party that is operating in California by making expenditures to support candidates for elective public office in the state or is recognized by the Secretary of State as a qualified political party as defined in section 5100 of the Elections Code.

[Note: Authority cited: *Section 8546, Government Code*. Reference: *Section 8252, Government Code*.]

§ ~~60822~~60823. **Political Party Central Committee**

“Political party central committee” means the designated body within a political party operating in California that directs the activities of the party throughout the state or within a particular county, such as a state central committee or a county central committee.

[Note: Authority cited: *Section 8546, Government Code*. Reference: *Section 8252, Government Code*.]

§ ~~60823~~60824. **Qualified Independent Auditor**

(a) “Qualified independent auditor” means an independent auditor currently employed by the State who satisfies all of the following requirements:

(1) Currently holds an active license issued by the California Board of Accountancy.

(2) By the time of selection to serve on the panel will have acquired at least ten years of experience practicing the skills of an independent auditor.

(3) Does not have a conflict of interest as defined in subdivision (a) of section 8252 of the Government Code.

~~(4) Is willing to serve as a member of the panel.~~

(b) As used in this section:

(1) “Independent auditor currently employed by the State” means an auditor who is currently employed as a permanent employee of the Bureau of State Audits, which, as provided in section 8543 of the Government Code, is independent of the executive branch and legislative control.

(2) “Experience practicing the skills of an independent auditor” means experience acquired while working as an auditor or investigative auditor for the Bureau of State Audits, ~~for its~~ predecessor, the California Auditor General, or for some other agency of state government, provided that such other agency conducted audits of private entities, local governmental entities, or state departments that were external to itself although under its oversight or investigative authority.

[Note: Authority cited: *Section 8546, Government Code*. Reference: *Section 8252, Government Code*.]

### § ~~608246~~60825. Randomly Draw

“Randomly draw” means to select by the following process for random drawing.

(a) At least ten days prior to any random drawing, the bureau shall provide notice to the public regarding the time and place of the drawing by posting a notice on the bureau’s website and by any other means deemed appropriate by the State Auditor.

(b) Prior to the drawing, the members of the pool from which the drawing will be made shall be divided into three subpools according to the party affiliation of the members of the pool. One subpool shall consist of members registered with the largest political party in California based on registration, another subpool shall consist of members registered with the second largest political party in California based on registration, and a third subpool shall consist of members not registered with either of the two largest political parties in California based on registration. The names of the members of each subpool shall be recorded on a list, ~~and~~ with the names sequentially numbered so that each member ~~shall be~~ assigned a unique identifying number that ~~is~~ also ~~shall be~~ recorded on the list.

(c) On the day of the drawing, the following procedures shall be followed:

(1) The drawing shall be open to the public.

(2) The drawing shall begin with the preparation of the balls that will be used for the drawing. ~~All of the~~The balls used for the drawing shall ~~be~~ consist of 75 newly purchased prenumbered bingo balls of uniform composition, weight, size, shape, and texture that are delivered to the location of the drawing in the manufacturer’s original packaging. Each of the sets shall be designated for use in selecting members from a corresponding subpool. The balls shall be prepared by extracting from each set of balls those balls that bear the number assigned to a member of the corresponding subpool, with all remaining balls set aside ~~dividing them into three separate groups that correspond in number with each of the three subpools.~~ ~~The balls for~~

~~each of the subpools shall be affixed with a label. The label shall have written on it the identifying number assigned to a member of that subpool, so each of the balls will bear the identifying number for a different member of the subpool.~~ The balls for each subpool shall be kept together and segregated for use in three separate subpool drawings.

(3) The balls for each subpool drawing shall be placed in a bingo cage. The cage shall be rotated vigorously to ensure that the balls are thoroughly mixed. The cage will drop a number of balls equal to the number of persons who must be drawn from the subpool, including any persons who are to serve as alternates. The number and name of the persons drawn during each subpool drawing shall be announced and duly recorded.

(4) After each subpool drawing, the bingo cage shall be emptied to allow the bingo cage to be used for the next subpool drawing until all of the subpool drawings are completed.

(d) At the conclusion of the drawing, the names of all those selected during each subpool drawing shall be posted on the bureau's website and otherwise announced to the public as deemed appropriate by the State Auditor.

[Note: Authority cited: *Section 8546, Government Code*. Reference: *Section 8252, Government Code*.]

Go to: [Memorandum Number 8 Relating to Revisions to Proposed Regulations Implementing the Voters First Act](#)

#### § ~~60825~~60826. Registered Federal, State or Local Lobbyist

“Registered federal, state, or local lobbyist” means a person registered as a lobbyist with the United States Senate, the United States House of Representatives, the California Secretary of State, or any political subdivision of the State of California.

[Note: Authority cited: *Section 8546, Government Code*. Reference: *Section 8252, Government Code*.]

#### § ~~60826~~60827. Relevant Analytical Skills

(a) “Relevant analytical skills” means the learned abilities that a commissioner may need to successfully complete the work of the commission.

(b) Abilities related to performing the following tasks shall be considered relevant analytical skills: gathering and comprehending information that bears upon redistricting; evaluating the validity and significance of the information gathered by the commission in order to make sound decisions about the proper placement of communities in districts; applying the appropriate legal standards, including the United States Constitution and the Voting Rights Act of 1965 (commencing with section 1971 of title 42 of the United States Code), to drawing district boundaries; and working effectively as a member of a group to promote redistricting decisions that are factually and legally defensible and that the commission can agree upon.

(c) The following are examples of relevant analytical skills grouped according to the tasks listed in subdivision (b):

(1) Gathering and comprehending information that bears upon redistricting:

(A) An ability to read and understand dense and technical written materials, including maps and ~~complicated~~ statistical information.

(B) An ability to participate effectively in public hearings regarding redistricting by listening carefully and critically to the testimony of witnesses and formulating concise questions that will elicit relevant information.

(2) Evaluating the validity and significance of the information gathered by the commission in order to make sound decisions about the proper placement of communities in districts:

(A) Basic mathematical skills.

(B) Familiarity with using computers and working with ~~sophisticated~~ software programs such as spreadsheet programs, mapping programs, or word processing programs.

(C) An ability to assess the credibility of information provided by staff, consultants, and members of the public, distinguish facts from opinions, distinguish relevant facts from irrelevant facts, and assess the relative strength of competing arguments.

(D) An ability to resolve complex problems, particularly those involving factual ambiguities as may arise when all of the relevant facts are not apparent or when there are conflicting claims about the facts.

(3) Applying the appropriate legal standards to drawing district boundaries:

(A) An ability to understand the legal principles that govern redistricting as communicated through written materials and advice provided by the commission's legal counsel.

(B) An appreciation for the importance of applying proper legal standards to redistricting decisions.

(4) Working effectively as a member of a group to promote redistricting decisions that are factually and legally defensible and that the commission can agree upon:

(A) Effective communication skills, including basic writing skills ~~and strong oral communication skills.~~

(B) An ability to interact effectively with other commissioners to build consensus on proposed decisions through reasoned discussion and negotiation.

(d) An applicant may demonstrate his or her possession of relevant analytical skills through a description of those skills and through occupational, academic, volunteer, or life experiences such as:

(1) Compiling information from a variety of sources, including statistical reports, expert opinions, and members of the public to develop an understanding of an issue or problem.

(2) Assessing the value of information received from various sources to determine how much weight should be given to certain information versus other information when making a decision concerning an issue.

(3) Receiving expert advice, particularly of a legal nature, and applying that advice to decisions.

(4) Participating in group decision-making as a member of a commission, board, grand jury, task force, or other collection of individuals whose mission was to produce a report, plan, or other work product addressing some issue or problem.

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§ ~~60827~~60828. Staff

“Staff” as used in subdivision (a)(2)(~~Bb~~) of section 8252 of the Government Code means any person directly employed, with or without compensation, by the Governor, a member of the Legislature, a member of the Congress of the United States elected from California, or a member of the State Board of Equalization.

[Note: Authority cited: *Section 8546, Government Code*. Reference: *Section 8252, Government Code*.]

§ ~~60828~~60829. State Office

“State office” means every office, agency, department, division, bureau, board, and commission within the government of the State of California.

[Note: Authority cited: *Section 8546, Government Code*. Reference: *Section 8252, Government Code*.]

SUB-CHAPTER 2. APPLICANT REVIEW PANEL

60830 - ~~60836~~60837

§ 60830. Selection of Panel Members and Alternate Panel Members

(a) The State Auditor shall randomly draw the members of the panel from a pool consisting of all qualified independent auditors as defined in title 2, California Code of Regulations, ~~title 2~~, section ~~60822~~60824.

(b) The random drawing shall be conducted in the manner prescribed by title 2, California Code of Regulations, title 2, ~~section 60824~~60825.

(c) Immediately after drawing a member of the panel from any of the subpools that have been established based on party affiliation, the State Auditor may randomly draw an alternate panel member from the same subpool to serve in the event that the panel member's position on the panel becomes vacant.

(d) If any position on the panel becomes vacant, and the alternate panel member randomly drawn from the same subpool is not available to fill the position, the State Auditor shall conduct another random drawing as necessary to fill the position.

[Note: Authority cited: *Section 8546, Government Code*. Reference: *Section 8252, Government Code*.]

### **§ 60831. Information About Prospective and Selected Panel Members**

The bureau shall post on the bureau's website the following information about prospective and selected members of the panel:

(a) At least 10 days prior to any random drawing of members of the panel, the bureau shall post the names, party affiliations, and relevant qualifications of the qualified independent auditors who will constitute the pool from which the members will be drawn. This information shall remain posted until the random drawing is concluded.

(b) As soon as practicable following any random drawing of members of the panel, the bureau shall post the names, party affiliations, and relevant qualifications of the qualified independent auditors who were selected to serve as members and alternate members of the panel. This information shall remain posted until the first eight members of the commission have been randomly drawn by the State Auditor.

[Note: Authority cited: *Section 8546, Government Code*. Reference: *Section 8252, Government Code*.]

### **§ 60832. Training of Panel Members**

Prior to any member of the panel performing the duties of a panel member, the bureau shall provide the panel member with training in preparation for the performance of those duties. The training shall include, but not necessarily be limited to, all of the following subjects:

(a) The requirements for conducting a public meeting, including the requirements imposed by the Bagley-Keene Opening Meeting Act (commencing with section 11120 of the Government Code).

(b) The duties of the panel as described in the California Voters FIRST Act and the regulations implementing its provisions.

(c) California's diverse demographics and geography.

(d) The responsibilities of the Commission as set forth in the California Voters FIRST Act, the United States Constitution and the Voting Rights Act of 1965 (commencing with section 1971 of title 42 of the United States Code).

(e) The process for performing redistricting, including the use of computer software to draw district lines.

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### § ~~60832~~60833. Duties of Panel Members

While serving on the panel, the members of the panel, in addition to complying with section 8252, subdivision (d) of the Government Code, shall comply with all of the following requirements:

(a) Perform the work of the panel in a manner that is consistent with the statutes and regulations governing the panel's work.

(b) Refrain from engaging in any conduct described in section 19572 of the Government Code that would be cause for employee discipline.

(c) ~~Not communicate~~Refrain from communicating with any applicant for the Commission except as authorized by the application process set forth in title 2, California Code of Regulations sections 60841 through 60851.

(d) Limit any discussion of specific applicants or application materials to discussions with other panel members during public meetings and to discussions with bureau staff assigned to assist the panel.

(e)~~(de)~~ Conduct the work of the panel in a manner that is impartial and that reinforces public confidence in the integrity of the panel's work.

[Note: Authority cited: *Section 8546, Government Code*. Reference: *Section 8252, Government Code*.]

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### § ~~60833~~60834. Removal of Panel Members

(a) The State Auditor shall have the authority to remove from the panel any member that the State Auditor determines ~~can no longer~~cannot serve as a member of the panel due to any of the following:

(1) Resignation from the panel.

(2) ~~Failing~~Failure or inability to satisfy any of the requirements for being a Qualified Independent Auditor as described in title 2, California Code of Regulations, ~~title 2,~~ section ~~60832~~60824.

(3) ~~Failing-Failure or inability~~ to perform the duties of a panel member as described in title 2, California Code of Regulations, ~~title 2~~, section 60833.

(b) Upon the removal of any member of the panel, the State Auditor shall replace the panel member with an alternate panel member drawn from the same subpool. If the alternate panel member randomly drawn from the same subpool is not available to fill the position, the State Auditor shall conduct another random drawing as necessary to fill the position.

(c) The replacement of a panel member with an alternate panel member shall not affect the validity of any decision previously made by the panel.

[Note: Authority cited: *Section 8546, Government Code*. Reference: *Section 8252, Government Code*.]

### § ~~60834~~60835. Panel Administration

(a) The bureau shall provide the panel with administrative, technical, and clerical support as needed by the panel to carry out its responsibilities under the Act. This support shall include, but not be limited to, the provision of office equipment, facilities, and staff sufficient to perform the following tasks:

- (1) Process applications.
- (2) Collect information concerning applicants.
- (3) Schedule meetings.
- (4) Maintain files.
- (5) Make travel arrangements.
- (6) Communicate with the public regarding panel decisions.

(b) The bureau shall provide the panel with legal counsel. To the extent permitted by law, all work performed by the bureau's legal counsel and all communications between the bureau's legal counsel and the panel shall be confidential and protected from disclosure by any applicable privileges.

(c) The bureau shall retain the records concerning the application process, including correspondence, applicant lists, applications and supporting materials, public comments and responses, and video recordings for a period of at least 12 years.

(d) If a position on the panel becomes vacant, the bureau shall provide the person filling the vacancy with all of the documents that were provided to the outgoing panel member.

[Note: Authority cited: *Section 8546, Government Code*. Reference: *Section 8252, Government Code*.]

**§ ~~60835~~60836. Panel Meetings**

(a) The panel shall meet in Sacramento.

(b) The panel shall elect a panel chair during its first meeting. The chair shall preside over all panel meetings. A majority of the panel members may replace the chair or appoint an acting chair to serve in the chair's absence.

(c) Two members of the panel constitutes a quorum.

(d) The panel is subject to the provisions of the Bagley-Keene Opening Meeting Act (commencing with section 11120 of the Government Code). Consistent with that act, panel members may independently review applications prior to any public meeting.

(e) All deliberations by members of the panel regarding applicants shall take place in open session.

(f) Except in instances where it conflicts with state law, the panel shall conduct the meetings of the panel in accordance with the most recent edition of Robert's Rules of Order.

[Note: Authority cited: *Section 8546, Government Code*. Reference: *Section 8252, Government Code*.]

**§ ~~60836~~60837. Panel Voting**

Panel decisions relating to the removal of an applicant from an applicant pool, or the reconsideration of a decision to remove an applicant from an applicant pool, shall be by a unanimous vote of all three panel members. All other panel decisions may be made by majority vote.

[Note: Authority cited: *Section 8546, Government Code*. Reference: *Section 8252, Government Code*.]

**SUB-CHAPTER 3. CITIZENS REDISTRICTING COMMISSION**

**60840 – 60855**

**ARTICLE 1. APPLICATION PROCESS**

**§ 60840. Outreach Program**

(a) In conjunction with initiating an application process for selecting the members of the commission, the bureau shall conduct an outreach program to alert the public to the application

process and to encourage the submission of applications by a diverse pool of qualified applicants. The bureau's outreach program shall, at a minimum, include all of the following:

(1) Posting a calendar on the bureau's website indicating the key dates and deadlines for the application process, including, when established, the period during which the bureau will accept applications.

(2) Producing outreach materials regarding the role of the commission, the eligibility and qualifications requirements for serving as a commissioner, and the process for selecting commissioners.

(3) Identifying community partners and requesting that they assist in recruiting qualified applicants.

(4) Creating and distributing public service announcements and print advertisements regarding the application process for placement in ~~both~~ local, regional, and ethnic media.

(5) Upon posting an electronic application form on the bureau's website, widely publicizing both the availability of the application and the deadline for its submission.

(b) The breadth and scope of the bureau's outreach program is dependent on the funding that is available for the program.

[Note: Authority cited: *Section 8546, Government Code*. Reference: *Section 8252, Government Code*.]

#### **§ 60841. Overview of the Application Process**

The application process shall consist of five phases.

(a) During Phase I, applicants shall be required to complete and submit an initial application form, as described in section 60843, to determine their eligibility to become members of the initial applicant pool.

(b) During Phase II, applicants shall be required to complete and submit a supplemental application form and supporting materials, as described in section 60847, for an evaluation of their relative qualifications. From this pool of applicants, the panel shall reduce the applicant pool to a pool of not more than 120 applicants, who shall proceed to Phase III of the application process.

(c) During Phase III, the panel shall interview the applicants remaining in the applicant pool, as described in section 60849, and reduce the applicant pool to 60 of the most qualified applicants, who shall proceed to Phase IV of the application process.

(d) During Phase IV, the panel shall submit a list of the names of the 60 applicants remaining in the applicant pool ~~shall be submitted~~ to the Legislature, where, as described in section 60852, not more than 24 names shall be removed from the list by the legislative leaders.

(e) During Phase V, the State Auditor shall randomly draw the names of eight applicants from those remaining after the legislative leaders have exercised their right to remove applicants. The eight applicants whose names are drawn by the State Auditor shall become members of the commission, and they shall select thea final six commissioners from the remaining pool of applicants.

[Note: Authority cited: *Section 8546, Government Code*. Reference: *Section 8252, Government Code*.]

### **§ 60842. General Requirements Applicable to Every Phase of the Application Process**

All of the following requirements apply to each phase of the application process:

(a) Except for individuals qualifying for a reasonable accommodation under the Americans with Disabilities Act of 1990 (commencing with section 12101 of title 42 of the United States Code 42 U.S.C. § 12101, et seq.), applicants shall fill out and submit all applications electronically using the bureau's website. The bureau shall neither make available nor accept paper applications, and all application materials, except letters of recommendation, shall be submitted to the bureau electronically.

(b) All deadlines established by the bureau and the panel, including deadlines for the submission of application materials are final. Application materials not timely received or deemed incomplete by the bureau or the panel shall not be considered.

(c) The bureau or the panel may inquire about or seek additional information from an applicant during any phase of the application process.

(d) The bureau or the panel may exclude or remove from an applicant pool any applicant who does any of the following:

- (1) Submits more than one Phase I or Phase II application.
- (2) Submits an incomplete application.
- (3) Fails to timely submit supporting materials, including letters of recommendation.
- (4) Fails to comply with deadlines established by the bureau or the panel.

(5) Fails to timely respond to inquiries, or to provide additional information as requested by the bureau or the panel.

(e) All applications shall include a certification by the applicant that he or she has provided true and correct information.

(f) All application materials collected and maintained by the bureau are public records and therefore subject to disclosure as provided by the California Public Records Act (commencing with section 6250 of the Government Code), unless exempted from disclosure by a specific provision of the California Public Records Act or disclosure is prohibited by some other state or federal law.

(g) To enhance the transparency of the application process, the bureau shall as soon as practicable, post application materials on the bureau's website, except that it may decline to post any material, or specific information ~~contained~~ in any material, that bureau staff determines to be either of the following:

(1) Personal in nature, such as residence addresses, telephone numbers, or so private ~~in nature~~ that it would be inappropriate for public disclosure.

(2) Offensive or harassing in nature due to sexual, profane, racist, or otherwise bigoted content.

(3) Exempt from disclosure under the California Public Records Act or disclosure is prohibited by some other state or federal law.

(gh) In a manner consistent with state and federal law, as well as bureau policy, the bureau shall protect and keep confidential any materials or information that is prohibited from public release.

(i) All information provided by or about an applicant through an application, public comment, or by any other means may be subject to investigation and verification by the bureau or the panel.

(hj) Except as provided in title 2, California Code of Regulations, ~~title 2~~, section 60851, an applicant may not seek reconsideration of any decision by the bureau or the panel.

[Note: Authority cited: *Section 8546, Government Code*. Reference: *Section 8252, Government Code*.]

Go to: Memorandum Number 8 Relating to Revisions to Proposed Regulations Implementing the Voters First Act

### § 60843. Phase I Initial Application

(a) On or before January 1 of the application year, the bureau shall initiate Phase I of the application process by posting an initial application form on the bureau's website. Except for individuals qualifying for a reasonable accommodation under the Americans with Disabilities Act of 1990 (commencing with section 42 U.S.C. § 12101, et seq. of the United States Code), applicants shall complete the application electronically and submit it using the bureau's website.

(b) The Phase I initial application period shall extend a minimum of 60 days.

(c) The initial application form shall solicit information from the applicant to determine his or her eligibility to become a member of the initial applicant pool. The information the bureau shall seek via the initial application includes, ~~but need not be limited to,~~ all of the following:

(1) ~~Contact~~ The full name and contact information for the applicant, including electronic mail address, physical residential address, mailing address, and telephone numbers.

(2) The applicant's race, ethnicity, gender, age, date of birth, and ~~economic status~~ household income.

(3) The applicant's voter registration status and party affiliation.

(4) Whether the applicant will be able to satisfy the eligibility requirements for commission membership set forth in subdivision (c)(3) of section 2 of Article XXI of the California Constitution.

(5) Whether the applicant has a conflict of interest.

(d) The applicant shall certify that the information he or she provides on the initial application is true and correct.

[Note: Authority cited: *Section 8546, Government Code*. Reference: *Section 2, Article XXI, California Constitution; Section 8252, Government Code*.]

#### § 60844. Phase I Initial Application Review

(a) The bureau shall review each application that is submitted during the Phase I application period and exclude from the initial applicant pool any applicant who has not complied with the application process or is not eligible to serve on the commission due to any of the following:

(1) Submitting more than one application.

(2) Submitting an incomplete or untimely application.

(3) Not satisfying the eligibility requirements of subdivision (c)(3) of section 2 of Article XXI of the California Constitution.

(4) Having a conflict of interest.

(b) Applicants not excluded as provided in subdivision (a) shall be placed in the initial applicant pool and invited by the bureau to participate in Phase II of the application process.

(c) Applicants excluded from the initial applicant pool shall be notified by the bureau and advised of the grounds.

[Note: Authority cited: *Section 8546, Government Code*. Reference: *Section 2, Article XXI, California Constitution; Section 8252, Government Code*.]

### **§ 60845. Publication of Names of Applicants in Initial Applicant Pool**

(a) Having excluded from the initial applicant pool those applicants who, based on their initial application, were not eligible to serve as members of the commission because of an inability to satisfy the requirements of subdivision (c)(3) of section 2 of Article XXI of the California Constitution, or due to a conflict of interest, the bureau shall post on the bureau's website a list of the names of the applicants who have been placed in the initial applicant pool.

[Note: Authority cited: *Section 8546, Government Code*. Reference: *Section 8252, Government Code*.]

### **§ 60846. Written Public Comments and Responses**

(a) Beginning on the date that the names of the successful Phase I applicants are posted on the bureau's website, and continuing throughout the remainder of the application process until the panel selects 60 of the most qualified applicants, the bureau shall provide opportunities for the public to submit written comments regarding the applicants being considered. The bureau shall post a form for submitting written comments on the bureau's website. The public may submit comments electronically or by facsimile, United States mail, or other common carrier.

(b) The panel may only consider written comments that it receives regarding applicants who have been placed in a pool of applicants for the panel's evaluation and have not been removed. To be considered by the panel, a written comment must satisfy all of the following requirements:

(1) The bureau received the written comment prior to the deadline established by the bureau for receiving written comments concerning the applicants being considered during the current phase of the application process.

(2) The comment contains specific facts related to an applicant's eligibility and qualifications to serve as a member of the commission or is related to the accuracy of any statement made by the applicant as part of the application process.

(3) The information that is contained in the comment appears sufficiently credible to warrant consideration.

(4) The name and contact information for the person providing the comment is included in the comment.

(5) The comment contains a certification by the person providing the comment that the information included in the comment is true and correct and based on the author's personal knowledge.

(c) Subject to the provisions of title 2, California Code of Regulations, ~~title 2~~, section 60842, subdivision (f), the bureau shall, as soon as practicable, post on the bureau's website all written comments that may be considered by the panel pursuant to subdivision (b) ~~of this section~~, including the name of the person providing the comment.

(d) The bureau shall send a copy of any written comments received about an applicant to the applicant, with a notice stating how the applicant may submit a written response and the deadline for submitting the response.

(e) Written comments and responses about an applicant submitted during any phase of the application process shall be included in the applicant's application materials and may be considered by the panel during all subsequent phases of the application process during which the applicant remains in a pool of applicants for the panel's evaluation. Comments and responses received after the deadline for receiving comments during a particular phase of the application process may be considered by the panel during a subsequent phase provided the applicant remains in a pool of applicants for the panel's evaluation.

[Note: Authority cited: *Section 8546, Government Code*. Reference: *Section 2, Article XXI, California Constitution; Section 8252, Government Code*.]

Go to: Memorandum Number 8 Relating to Revisions to Proposed Regulations Implementing the Voters First Act

#### § 60847. Phase II Supplemental Application

(a) In Phase II of the application process, the bureau shall direct the members of the initial applicant pool to submit a supplemental application with supporting materials. The bureau shall post supplemental application forms on the bureau's website for use by the members of the applicant pool. Except for individuals qualifying for a reasonable accommodation under the Americans with Disabilities Act of 1990 (commencing with section 12101 of title 42 of the United States Code 42 U.S.C. § 12101, et seq.), applicants shall complete the supplemental application forms and supporting materials electronically and submit them using the bureau's website. Notwithstanding this requirement, applicants may submit letters of recommendation by facsimile, United States mail, or other common carrier as an alternative to submitting the letters through the bureau's website.

(b) The Phase II supplemental application period shall extend a minimum of 30 days.

~~(bc)~~ The supplemental application, with supporting materials, shall consist of, ~~but need not be limited to,~~ all of the following:

(1) Questions designed to elicit information from the applicant describing his or her qualifications to serve on the commission, including essay questions to be answered in 3200 characters (250 approximately 500 words (—characters)) or less.

(2) Questions designed to elicit information about the applicant, including:

(i) Former names, former residences, and felony convictions, if any eriminal history.

(ii) Educational and employment history.

(iii) Involvements with, and financial contributions to, professional, social, political, volunteer, and community organizations and causes.

~~(iv) Financial interests.~~

(3) Questions about an applicant's immediate family members.

~~(4) A request for requirement that the applicant submit~~ three letters of recommendation from individuals or organizations.

~~(4)(5) ~~Notice that the applicant will be required to submit a Statement of Economic Interests (FPPC Form 700) if the applicant is later identified by the panel as an applicant that may be directed to participate in an interview by the panel.~~~~

~~(d)~~ The bureau shall remove from the initial applicant pool any applicants who fail to submit a completed supplemental application with supporting materials by the deadline established by the bureau.

~~(d)~~~~(e)~~ The bureau shall transmit a copy of every complete and timely received supplemental application with supporting materials to the panel. Subject to the provisions of title 2, California Code of Regulations, title 2, section 60842, subdivision (f), the bureau shall also post the supplemental application with supporting materials on the bureau's website.

~~(e)~~~~(f)~~ After posting the supplemental applications with supporting materials on its website, the bureau shall establish a deadline for the receipt of written public comments during Phase II of the application process.

[Note: Authority cited: *Section 8546, Government Code*. Reference: *Section 2, Article XXI, California Constitution; Section 8252, Government Code*.]

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#### § 60848. Phase II Supplemental Application Review

(a) During Phase II, each member of the panel shall review the application materials submitted regarding each applicant remaining in the applicant pool, for the purpose of determining which applicants shall be removed from the pool to leave no more than 120 of the most qualified applicants who will be invited to participate in Phase III of the application process.

(b) The maximum of 120 most qualified applicants who will be invited to participate in Phase III of the application process shall consist of the following three subpools:

(1) 40 applicants who are registered with the largest political party in California.

(2) 40 applicants who are registered with the second largest political party in California.

(3) 40 applicants who are not registered with either of the two largest political parties in California.

(c) At the panel's request, the State Auditor may assign staff to assist the members of the panel with their review of the application materials. This assistance may include, but need not be limited to, preparing summaries of applicants' qualifications and making recommendations to the panel members regarding the relative qualifications of the applicants.

(d) The panel shall remove from the applicant pool any applicant who the panel determines has a conflict of interest or does not meet the requirements of subdivision (c)(3) of section 2 of Article XXI of the California Constitution.

(e) In reducing the applicant pool to not more than 120 of the most qualified applicants, the panel shall evaluate the applicants based on their relevant analytical skills, ability to be impartial, and appreciation for California's diverse demographics and geography.

(f) As the application process is ~~intended-designed~~ to produce a commission that is reasonably representative of the State's diversity, as specified in subdivision (c)(1) of section 2 of Article XXI of the California Constitution, the panel shall also consider whether the composition of the pool of applicants to participate in Phase III of the application process is reflective of the State's diversity. The panel shall not use formulas or specific ratios in identifying which applicants will participate in Phase III of the application process.

(g) During the panel's review of the application materials and reduction of the applicant pool, the panel shall identify those applicants it considers likely to be among the 120 of the most qualified applicants, and direct those applicants to submit a Statement of Economic Interests (Form 700) within a period of 30 days, so that the panel may consider the applicants' statements prior to identifying the pool of 120 most qualified applicants.

(gh) The bureau shall post on the bureau's website a list of the applicants remaining in the applicant pool who will therefore be invited to participate in Phase III of the application process. The bureau shall also notify the applicants removed from the applicant pool that they have been removed from the pool.

[Note: Authority cited: *Section 8546, Government Code*. Reference: *Section 2, Article XXI, California Constitution*; *Section 8252, Government Code*.]

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### § 60849. Phase III Interviews

(a) In Phase III of the application process, the panel shall direct the applicants remaining in the applicant pool to participate in public interviews conducted by the panel in Sacramento.

(b) The bureau shall schedule the interviews at the convenience of the panel, providing at least ~~5-7~~ calendar days notice to the applicants of the date, time, and location of the interviews.

(c) The bureau shall pay the reasonable and actual expenses for an applicant to attend an interview as described in this subdivision. The bureau shall also reimburse applicants for the reasonable and necessary travel expenses that they incur to attend an interview, including the following:

(1) Airfare at the commercial carrier coach fare rate, supported by a receipt. If the bureau determines that an applicant requires air travel to attend an interview, the bureau shall directly purchase airline tickets for that applicant.

(2) Other Non-air transportation expenses, supported by a receipt shall be reimbursed and computed in accordance with the applicable regulations of the Department of Personnel Administration in effect on the date that the expenses are incurred. Reimbursement shall not exceed the maximum reimbursement rates established for nonrepresented state employees.

(3) Living expenses shall be reimbursed in an amount not to exceed the maximum reimbursement rates for nonrepresented state employees claimed and computed in accordance with the Department of Personnel Administration regulations in effect on the date the expenses are incurred. This includes overnight accommodations if the bureau determines such accommodations are necessary.

(4) An applicant may request a reasonable advance from the bureau if incurring the expenses described in paragraph (2) would create an undue financial hardship. All requests are subject to approval by the State Auditor or the State Auditor's designee.

~~(e)~~(d) During the interviews, questions may only be posed by members of the panel, panel staff, and legal counsel for the panel. The questioning may concern anything that is relevant to an applicant's eligibility and qualifications to serve on the commission.

~~(d)~~(e) The panel shall record all of the interviews that it conducts and post the recordings on the bureau's website as soon as practicable after each interview is completed.

~~(e)~~(f) The bureau shall establish a deadline for the receipt of written public comments during Phase III of the application process. The deadline shall be set for a date following the conclusion of all of the interviews.

[Note: Authority cited: *Section 8546, Government Code*. Reference: *Section 2, Article XXI, California Constitution*; *Section 8252, Government Code*.]

### **§ 60850. Phase III Applicant Review**

(a) During Phase III, the panel shall review the applicants who participated in interviews by the panel, along with all of the application materials submitted regarding those applicants, for the purpose of determining which applicants shall be removed from the applicant pool to leave 60 of the most qualified applicants who will participate in Phase IV of the application process.

(b) The 60 ~~most qualified~~ applicants who will participate in Phase IV of the application process shall consist of the following three subpools:

(1) 20 applicants who are registered with the largest political party in California.

(2) 20 applicants who are registered with the second largest political party in California.

(3) 20 applicants who are not registered with either of the two largest political parties in California.

(c) The panel shall remove from the applicant pool any applicant who the panel determines has a conflict of interest or does not meet the requirements of subdivision (c)(3) of section 2 of Article XXI of the California Constitution.

(d) In reducing the applicant pool to 60 of the most qualified applicants, the panel shall evaluate the applicants based on their relevant analytical skills, ability to be impartial, and appreciation for California's diverse demographics and geography.

(e) As the application process is ~~intended designed~~ to produce a commission that is reasonably representative of the State's diversity, as specified in subdivision (c)(1) of section 2 of Article XXI of the California Constitution, the panel shall also consider whether the composition of the pool of applicants to participate in Phase IV of the application process is reflective of the State's diversity. The panel shall not use formulas or specific ratios in identifying which applicants will participate in Phase IV of the application process.

(f) The bureau shall post on the bureau's website a list of the applicants remaining in the applicant pool who will therefore be invited to participate in Phase IV of the application process. The bureau shall also notify the applicants removed from the applicant pool that they have been removed from the pool.

[Note: Authority cited: *Section 8546, Government Code*. Reference: *Section 2, Article XXI, California Constitution; Section 8252, Government Code*.]

### **§ 60851. Reconsideration**

(a) An applicant who is excluded or removed from an applicant pool, by either the bureau or the panel, based on any of the following grounds, may seek timely reconsideration of the decision by the entity making the decision:

(1) Conflict of interest.

(2) Failing to satisfy the eligibility requirements for serving as a member of the commission, as set forth in subdivision (a)(3) of section 2 of Article XXI of the California Constitution.

(3) Failing to comply with a procedural requirement of the application process.

(b) All other decisions by the bureau and the panel, including decisions to exclude or remove applicants from an applicant pool, except for the decisions described in subdivision (a) ~~of this section~~, are final at the time the decisions are made, and an applicant has no right to seek reconsideration of those decisions by either the bureau or the panel.

(c) An applicant seeking reconsideration of a decision described in subdivision (a) ~~of this section~~ shall submit to the bureau a written request for reconsideration that complies with all of the following requirements:

(1) ~~Be Is~~ received by the bureau within 10 days after the date that the bureau issued a notice to the applicant that he or she was being excluded or removed from an applicant pool for any of the reasons stated in subdivision (a) ~~of this section~~.

(2) Includes a statement of facts, with supporting evidence, establishing by a preponderance of evidence that the applicant was excluded or removed from an applicant pool erroneously.

(3) Contains a certification that the facts alleged in the request for reconsideration are true and correct.

(d) All requests for reconsideration that do not satisfy the requirements of subdivision (c) ~~of this section~~ shall be summarily denied by the bureau or the panel. Upon the bureau or the panel denying a request for reconsideration of a decision described in subdivision (a) ~~of this section~~, or upon the period for filing such a request expiring without a request being received, whichever occurs first, the decision shall become final and the applicant will have no further right to seek reconsideration of the decision.

(e) If the bureau or the panel determines that an applicant has, in a written request for reconsideration, established by a preponderance of evidence that he or she was erroneously excluded or removed from an applicant pool for one of the reasons stated in subdivision (a) ~~of this section~~, the bureau or the panel shall place the applicant in that applicant pool and the applicant shall participate in the application process in the same manner as if the applicant had not been excluded or removed.

(f) Notwithstanding subdivisions (b) and (d) ~~of this section~~, at any time during the application process, the panel may, solely at its own discretion, reconsider and correct a past decision of the panel or the bureau during the application process due to gross error or other compelling circumstances.

[Note: Authority cited: *Section 8546, Government Code*. Reference: *Section 2, Article XXI, California Constitution*; *Section 8252, Government Code*.]

#### **§ 60852. Phase IV: Applicant Name Striking Process**

(a) During Phase IV of the application process, the panel shall present to the Legislature a list containing the names of 60 of the most qualified applicants identified by the panel during Phase

III of the application process for legislative leaders to exercise their right to strike up to 24 names from the list.

(b) On or before October 1 of the application year, the panel shall present to the Secretary of the Senate and the Chief Clerk of the Assembly, by hand-carried letter, the list containing the names of 60 of the most qualified applicants divided into three subpools of twenty each, based on their party affiliation and nonaffiliation. The bureau shall also make available to the legislative leaders the application materials and recorded interviews of each of the applicants on the list, and any factual materials gathered by the bureau or the panel concerning those applicants.

(c) On or before November 15 of the application year, the State Auditor shall accept from the Secretary of the Senate and the Chief Clerk of the Assembly a joint presentation of the list of names described in subdivision (a) ~~of this section~~ with no more than a total of eight names stricken by the legislative leaders from each of the subpools. Time permitting prior to the expiration of the November 15 deadline, if the Secretary of the Senate and the Chief Clerk of the Assembly jointly present a list of names to the State Auditor that does not retain at least twelve names in each subpool, the State Auditor shall return the list to the Secretary of the Senate and the Chief Clerk of the Assembly for correction.

(d) An applicant whose name has been stricken from a subpool by a legislative leader shall be removed from the selection process and may not serve as a member of the commission. An applicant removed from the selection process because his or her name was stricken from a subpool by a legislative leader may not appeal or seek reconsideration of the removal from the bureau or the panel.

[Note: Authority cited: *Section 8546, Government Code*. Reference: *Section 2, Article XXI, California Constitution*; *Section 8252, Government Code*.]

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### **§ 60853. Phase V: Random Drawing of First Eight Commissioners**

(a) During Phase V of the application process, the State Auditor shall randomly draw the names of eight applicants from those remaining after the legislative leaders have exercised their right to strike the names of up to 24 applicants from the pool of 60 of the most qualified applicants identified by the panel. The State Auditor shall conduct the random drawing on or before November 20 of the application year in the manner prescribed by title 2, California Code of Regulations, ~~title 2~~, section 60824.

(b) Notwithstanding subdivision (a) ~~of this section~~, the State Auditor shall randomly draw the names of 8 applicants from the names of all the applicants in the pool of 60 most qualified applicants identified by the panel, rather than from a reduced collection of names, if the Secretary of the Senate and the Chief Clerk of the Assembly do not jointly present, by November 15 of the application year, a list containing the names of no fewer than 12 applicants in each of the three subpools that comprise the list.

(c) The eight applicants whose names are drawn by the State Auditor shall become members of the commission.

[Note: Authority cited: *Section 8546, Government Code*. Reference: *Section 2, Article XXI, California Constitution; Section 8252, Government Code*.]

**§ 60854. Transmission of Remaining Application Materials to ~~Commission~~ Secretary of State**

After the State Auditor randomly draws the names of the first eight commissioners, the bureau shall provide the eight commissioners ~~and the Secretary of State~~ with the application materials and recorded interviews of each of the applicants remaining in the applicant pool.

[Note: Authority cited: *Section 8546, Government Code*. Reference: *Section 8252, Government Code*.]

**§ 60855. Commission Vacancies**

(a) If a vacancy occurs on the commission before it completes its redistricting function, and the commission is unable to fill the vacancy with an applicant from the same subpool of applicants that the vacating commissioner was drawn or selected from, as it existed on November 20 of the application year, the commission shall provide written notification to the State Auditor. Upon receiving the written notice, the State Auditor shall, as soon as practicable, reconvene a panel to create a new subpool consisting of twenty of the most qualified applicants having the same party affiliation or nonaffiliation as the vacating commissioner. In creating the new subpool, the panel shall attempt to fill the subpool with applicants who participated in the most recent application process, according to the following order:

(1) Applicants who participated in interviews during Phase III of the application process.

(2) Applicants who submitted supplemental applications with supporting materials during Phase II of the application process.

(b) If a vacancy occurs on the commission after it completes its redistricting function, and the commission determines that it needs to fill the vacancy but is unable to fill it with an applicant from the same subpool of applicants that the vacating commissioner was drawn or selected from, as it existed on November 20 of the application year, the commission shall provide written notification to the State Auditor. Upon receiving the written notice, the State Auditor shall, as soon as practicable, reconvene a panel to create a new subpool consisting of twenty of the most qualified applicants having the same party affiliation or nonaffiliation as the vacating commissioner. In creating the new subpool, the panel shall attempt to fill the subpool with applicants who participated in the most recent application process in the manner specified by paragraphs (1) and (2) of subdivision (a) ~~of this section~~.

(c) “Completes its redistricting function,” for the purposes of this section, means approving three final maps that separately set forth the district boundary lines for the Senate, Assembly, and State Board of Equalization districts and certifying the three final maps to the Secretary of State.

(d) Upon creating a new subpool of applicants, the panel shall submit the names of the applicants in the subpool to the commission and the Secretary of State with the application materials and recorded interviews of each of the applicants.

[Note: Authority cited: *Section 8546, Government Code*. Reference: *Sections 8252, 8252.5 Government Code*.]

**California Bureau of State Audits**  
**MEMORANDUM NUMBER 8**

**To:** Elaine M. Howle, State Auditor

**From:** Sharon Reilly, Chief Counsel, Steven Russo, Senior Staff Counsel, Stephanie Ramirez-Ridgeway, Senior Staff Counsel, Janis Burnett, Staff Counsel

**Subject:** Revisions To Proposed Regulations Implementing the Voters First Act

**Date:** September 28, 2009

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**Introduction**

On July 31, 2009, the Bureau of State Audits (the “bureau”) proposed a series of regulations to clarify and implement the Voters FIRST Act (the “Act”),<sup>1</sup> which was approved by the voters at the November 2008 general election. Upon proposing the regulations, a 45-day public comment period commenced, which ended on September 14, 2009; the same day that the bureau conducted a hearing to receive comments from members of the public wishing to present their comments in person. During the 45-day comment period, we received numerous written comments, and at the hearing we received many oral and written comments from members of the public concerning the regulations.

During and after the public comment period, we carefully considered every comment that we received. We then revised our proposed regulations based on those comments and other ideas that have occurred to us since we proposed the regulations last July. We were not able to resolve all of the concerns that were shared with us, and we did not adopt all of the suggestions offered as proposed changes to the regulations. However, we tried to address as many of the concerns as we could, and adopted, in some form or another, all of the suggestions that we considered to be meritorious, consistent with other provisions of the regulations and the Act, consistent with what we view as the intent of the voters in approving the Act, and otherwise consistent with state and federal law.

The purpose of this memorandum is to provide some explanation for the more significant revisions to the regulations that we are proposing. The memorandum also addresses why we did not make certain requested changes that had a degree of popular support among some of the commenters. Although the memorandum does not address every minor revision that we made or address every requested change to the regulations that we decided not to make, we will certainly do this at a later stage of the rulemaking process in our final statement of reasons.

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<sup>1</sup> The Voters FIRST Act is contained in Article XXI of the California Constitution and Government Code, sections 8251 through 8253.6.

## **Proposed Regulation 60800. Ability to be Impartial**

We received several comments about this regulation. Most of the comments expressed concern about whether the regulation would prohibit some individuals from serving on the commission due to their past support for political parties, political candidates, or social or political causes. For example, concerns were raised that the regulation could exclude individuals who were involved in a school board race or who joined a local political club to address certain local environmental issues. Also, concerns were specifically raised about the regulation's requirement that to be impartial a commissioner must be able to "put aside support for or opposition to . . . social or political causes" when making redistricting decisions and whether the phrase "social or political causes" could have the effect of limiting the applicant pool.

We believe it is important to retain the phrase "social or political causes," so we have instead revised the proposed regulation to clarify that participation in such causes does not preclude an applicant from serving on the commission. The phrase is intentionally broad so that it can cover a wide range of social and political causes. For example "social or political causes" could range from mainstream activities such as participation in local party politics to extreme causes, such as the Ku Klux Klan or Neo-Nazi groups. According to the Southern Poverty Law Center, California has 84 different hate groups, the highest number in the nation.<sup>2</sup> Participation in more extreme social or political causes, such as hate groups, could indicate that an applicant would not be able to set aside his or her personal beliefs, so this is information the Applicant Review Panel (the "panel") should consider when assessing whether an applicant is suitable to serve on the commission.

In addition, as we indicated in Memorandum Number 4, dated July 31, 2009 ("Memorandum Number 4"), the Act requires each commission member to perform his or her redistricting responsibilities "in a manner that is *impartial* and that reinforces public confidence in the integrity of the redistricting process."<sup>3</sup> To that end, the Act specifies that commissioners must have the "ability to be impartial." That ability comes into play when applying the criteria for establishing single member districts for the Senate, Assembly, and State Board of Equalization through a mapping process.<sup>4</sup> As stated more specifically in Memorandum Number 4, we believe that the voters intended that the commissioners must have the ability to set aside their personal allegiances when applying the criteria for establishing the single member districts.

To address the concerns raised by the comments, we propose to retain the phrase "social and political causes" while providing more context regarding how an applicant who has been active in supporting candidates, political parties, or social or political causes, may demonstrate his or her "ability to be impartial." Thus, we revised the proposed regulation to acknowledge that "although an applicant may have strong views and may have participated in social or political causes," ~~the applicant must~~ "have the capacity and willingness while serving as a member of the

<sup>2</sup> <http://www.splcenter.org/intel/map/hate.jsp#s=CA>

<sup>3</sup> California Constitution, Article XXI, section 2(c)(6), italics added.

<sup>4</sup> California Constitution, Article XXI, section 2(d); see also Memorandum Number 4 at pages 2-8.

commission to set aside his or her personal views.”<sup>5</sup> The revisions also now specifically reference the objective criteria that commissioners must apply when making redistricting decisions so as to further clarify that commissioners must make redistricting decisions according to that criteria and not according to any personal beliefs about how redistricting should occur. That criteria is set forth in subdivision (d) of section (2) of Article XXI of the California Constitution.

We believe this proposed revision addresses concerns raised by the comments because it clarifies that the regulation is not intended to exclude persons who otherwise qualify to become a commissioner, but have been active in supporting candidates, political parties, or social or political causes. Instead, the proposed regulation merely provides that to be impartial one must be able to set aside his or her allegiances to make decisions with an open mind and that are fair to everyone affected. Thus, this revision to the proposed regulation clarifies that individuals who have allegiances may nonetheless serve on the commission so long as they can demonstrate to the panel that they can perform redistricting responsibilities in a manner that is impartial. Further, by referencing the criteria set forth in subdivision (d) of section 2 of Article XXI of the California Constitution, we clarify that the “ability to be impartial” includes the ability to apply the objective criteria set forth in that subdivision free from political influence or bias.

One commenter raised a concern about one of the specified ways an applicant may demonstrate an ability to be impartial, specifically, “having no personal, family, or financial relationships, commitments, or aspirations that might have a tendency to influence someone making a redistricting decision.” The commenter believes this requirement is vague and overbroad, and instead recommended using a “reasonable person” standard. We agree that the regulation would benefit from clarification of the standard to be applied by the panel in measuring whether an applicant has any relationships that would impair his or her ability to be impartial. We have therefore revised this provision of the regulation to read “having no personal, family, or financial relationships, commitments, or aspirations that a reasonable person would consider likely to improperly influence someone making a redistricting decision.”

Finally, we received several comments requesting that the proposed regulations place more emphasis on the Voting Rights Act of 1965 (the “VRA”),<sup>6</sup> including recognition that ethnic and racial minorities have faced an uphill battle in gaining fair representation. We believe that this is a fair comment given the importance of the VRA to the redistricting process. We have therefore addressed that comment in this regulation as well as other regulations, as explained later in this memorandum.

A redline version of this revised proposed regulation may be viewed [HERE](#).

#### **Proposed Regulation 60804. Appointment to Federal or State Office.**

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<sup>5</sup> Revised proposed regulation 60800, subdivision (a).

<sup>6</sup> Title 42, United States Code section 1971 et seq.

Many commenters made suggestions about the definition of appointment to state office, suggesting that it be narrowed in scope from our proposed regulation that included appointments to any state office by the Governor or a member of the Legislature, regardless of whether the appointment is subsequently approved by the Legislature. Interestingly, rather than offering a single alternative, these many commenters put forward a variety of ideas about how to set a narrower scope for what constitutes an appointment to state office, ranging from those appointments that involve the award of a salary or per diem to just those few appointments that are made to fill a vacancy in an elective office. Countering all of those commenters, however, were comments that our proposed regulation was a fair interpretation of the provision of the Act that excludes from the commission anyone appointed to a state office and the immediate family members of such an appointee. These comments asserted that our proposed regulation was reasonable and consistent with the will of the voters in approving the Act.

In the end, we concluded that a revision of the regulation to narrow the scope of what constitutes an appointment to state office is unwarranted. While our definition of appointment to state office will exclude certain people from serving as commissioners, these appear to be precisely the people that the Act contemplates being excluded from a citizens commission – those people and their immediate family members who may be beholden to the Legislature or the Governor, either due to, or as evidenced by, an appointment to office. Moreover, any argument that a person would not be beholden just because the person did not receive a salary or did not receive a per diem in conjunction with the appointment is unpersuasive, as it is the appointment itself that suggests the existence of a conflict of interest, regardless of the compensation received.

A redline version of this revised proposed regulation may be viewed [HERE](#).

### **Proposed Regulation 60805. Appreciation for California’s Diverse Demographics and Geography**

We received a variety of comments on this regulation. As those comments are so varied we will address each of them separately.

Some comments suggested adding sexual orientation, disability, language, and level of education to the list of demographic characteristics in subdivision (a)(1) that an applicant for the commission must understand as relating to voting preferences, and changing “level of income” to “economic status.”

In Memorandum Number 5, dated July 31, 2009 (“Memorandum 5”), we reasoned that the characteristics important to the redistricting process are those that may be considered in determining whether the residents of an area constitute a community of interest that needs to be reflected in the area’s redistricting. On that basis, we agree that sexual orientation should be included in subdivision (a)(1) because there are neighborhoods or localities that have a higher concentration of individuals who are gay, lesbian, bisexual, or transgender. Those areas include, for example, San Francisco, and certain neighborhoods in San Diego and Los Angeles. We also agree that “level of income” should be changed to “economic status” because the later phrase is more inclusive, and would include inherited wealth, property ownership, and other resources that in addition to level of income would be indicative of a person’s financial wealth.

We received a couple of comments that could be read to require that applicants have familiarity or prior experience with redistricting. First, one commenter suggested that we revise paragraphs (1) through (3) of subdivision (a) to specify that applicants understand individuals sharing certain demographic characteristics may “share social and economic interests, voting preferences, and similar viewpoints on other issues of mutual concern” and that those “groups of individuals may benefit from common representation.” The comments also suggested that a change be made to the description of distinct geographic characteristics that are listed in the proposed regulation. We believe that such requested revisions use language that is very specific to the redistricting process, and that many potential applicants would be unfamiliar with these concepts.

Second, other commenters suggested that we revise this proposed regulation to include an understanding that racial and ethnic minority communities have historically faced an uphill battle in gaining fair representation, and an understanding of how the placement of district boundaries affects whether such communities have equal electoral opportunities, and a general awareness of the role of the VRA in ensuring equal electoral opportunities for such communities. As indicated earlier, we agree that the proposed regulations will benefit from revisions related to the VRA. However, we are concerned that some of the proposed changes require a level of familiarity with the VRA that would tend to exclude well qualified applicants who simply lack experience performing redistricting or working with the VRA. For example, many applicants may have a general understanding of the historical limitations on the voting rights of racial and ethnic minorities and that applying the requirements of the VRA is important to remedying those historical limitations. However, it is likely that most potential applicants are unfamiliar with the specifics of the VRA because they are not voting rights experts and have no past experience performing redistricting.

We are concerned that these proposed revisions could be read to require some previous experience with redistricting, as an understanding of these issues is specific to redistricting. Moreover, while most ordinary citizens will not have more than a general understanding of redistricting and the VRA, that does not mean that they should be excluded from serving on the commission. As the voters approved a “Citizens Redistricting Commission” when they approved the Act, we do not believe that the voters intended for applicants to need such specific knowledge in order to be selected to serve.<sup>7</sup> Thus we did not make the requested changes because we think they could have the effect of excluding some otherwise well qualified applicants.

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<sup>7</sup> See Voter Information Guide for the November 4, 2008 General Election, Proposition 11, Analysis by the Legislative Analyst, at pp. 70-71.

Nonetheless, to address the concerns raised by these comments, we have revised the regulation to specify that applicants should have an awareness that voters having certain demographic characteristics, such as race or ethnicity, have had less opportunity to participate in the electoral process than others. Accordingly, we have revised subdivision (a)(3) of the regulation to read:

“A recognition that California benefits by having effective participation in the electoral process by registered voters of all demographic characteristics and residing in all geographic locations, including participation by those voters who in the past, as a consequence of sharing certain demographic characteristics, such as race and ethnicity, have had less opportunity than other members of the electorate to participate in the electoral process.”

Other comments suggested that we revise subdivision (b) of the regulation to expressly provide that volunteer experience should be evaluated by the panel in determining whether an applicant has demonstrated an appreciation for California’s diverse demographics and geography. We agree with this suggested change, and have made conforming changes to regulations 60800 and 60827 as well, to also direct the panel to examine volunteer experience in evaluating an applicant’s ability to be impartial and relevant analytical skills.

Finally, one commenter suggested that we apply to the selection of the panel members the same selection criteria used by the panel to identify the 60 applicants who will be finalists for selection to the commission. While from a policy standpoint the comment has merit, the Act requires a random selection of the panel members, and does not address the diversity of the panel. Thus, because we must select the panel randomly, and the Act provides no mechanism for considering the diversity of the panel, we cannot accommodate this suggestion.

A redline version of this revised proposed regulation may be viewed [HERE](#).

**Proposed Regulation 60814. Contributed \$2000 or More to any Congressional, State, or Local Candidate for Elective Public Office in Any Year (Replacing Formerly Proposed Regulation 60812)**

We received comments expressing concern about the application of the conflict of interest provision of the Act, found at section 8252, subdivision (a)(2)(A)(iv) of the Government Code, that excludes from the commission any applicant who has contributed \$2,000 or more in any year to a candidate for congressional, state, or local office. These comments specifically focused on the fact that while the Act does not exclude local candidates from serving on the commission, this provision could serve to exclude from the commission any local candidate who significantly self-financed a campaign for local office, and therefore contributed \$2,000 or more to his or her own campaign. They noted that while such an applicant may have self-financed his or her entire campaign, that applicant would be excluded from serving on the commission while his or her colleagues and competitors, who financed their campaigns with contributions from other people, would remain free to serve. They also noted a lack of justification for excluding applicants whose candidacy for local office presumably left them beholden to no one because they self-financed their campaigns while including applicants who, because they did not self-finance their

campaigns, received contributions from other individuals and organizations, and may be beholden to them.

We addressed this concern in the regulation by defining “contributed \$2,000 or more to any congressional, state, or local candidate for elective public office in any year” in a manner that is otherwise consistent with federal and state law, but excludes from this definition the payments made by a candidate for a local elective public office to support his or her own candidacy for that office. We then incorporated into the regulation all of the provisions defining “congressional, state, or local candidate for elective public office” that we included in our former proposed regulation 60812, and for the sake of clarity defined “in any year” as meaning any calendar year.

A redline version of this revised proposed regulation may be viewed [HERE](#).

### **Proposed Regulation 60815. Diversity (Formerly Proposed Regulation 60814)**

We received some comments requesting that we delete “economic status” from the definition of diversity, with the concern that including economic status within the definition could dilute the other categories listed. We received other comments stating the importance of retaining “economic status” in the definition of diversity to satisfy the intent of the voters to establish a true “Citizens Redistricting Commission” that is not limited to the well educated or to individuals with upper incomes. We consulted with our redistricting experts and they informed us that in their experience use of the phrase “economic status” is common in bolstering participation by racial and ethnic minorities in the electoral process. Thus, we have not deleted “economic status” from the definition of diversity.

Other comments suggested we broaden the definition of diversity to include sexual orientation and disability. As explained in Memorandum Number 5, the term diversity can be read very broadly to include a whole host of characteristics. Thus, in crafting this regulation, our focus was on characteristics bearing on redistricting, such as race and ethnicity. In addition, we are reluctant to expand the definition set forth in the Act beyond including economic status because that could dilute consideration of the characteristics specifically set forth in the Act, particularly race and ethnicity, which are of prime importance under the VRA. Thus we have not made any revisions to the proposed regulation.

A redline version of this revised proposed regulation may be viewed [HERE](#).

### **Proposed Regulation 60817. In-law (Formerly Proposed Regulation 60816)**

One commenter suggested that we expand the definition of “in-law” to include grandparents and grandchildren and that we clarify that the term includes sons and daughters in-law. We do not believe the term should be expanded to include grandparents and grandchildren, as that introduces a degree of family relationship that well exceeds what is included in the definition of “immediate family” contained in the Act. However, we agree that we should clarify that the term in-law includes sons and daughters in-law, as this change

keeps relatives within the same degree of consanguinity in the definition. We have revised the proposed regulation accordingly.

A redline version of this revised proposed regulation may be viewed [HERE](#).

### **Proposed Regulation 60819. Most Qualified Applicant (Formerly Proposed Regulation 60818)**

We received a comment that this regulation does not make it clear that a potential applicant who has not been registered with either of California’s two largest political parties during the last five years, but has shifted his or her party registration between one or more of the minor parties or between one or more of the minor parties and “decline to state” is not eligible to serve on the commission. We agree that the proposed regulation would benefit from clarification, and we have revised the regulation accordingly.

A redline version of this revised proposed regulation may be viewed [HERE](#).

### **Proposed Regulation 60825. Randomly Draw (Formerly Proposed Regulation 60824)**

We received a few comments about our process for randomly drawing the names of the eight applicants who will serve on the commission. We note that the panel will be formed using the same method set forth in this regulation. One commenter expressed concern about using labels to number the ping-pong balls that we proposed using for the drawing. In fact, that commenter actually tested the method proposed in the regulation, and concluded that it is problematic. Another commenter expressed concern about our proposal to assign unique numerical identifiers to the applicants outside of public view. That same commenter also expressed concern about the individual drawing the eight commissioners being present when the unique numerical identifiers are assigned to the applicants.

To address those concerns, we revised the proposed regulation to require that the names of every member in the subpool be recorded on a list with their names sequentially numbered so that each member is assigned a unique identifying number. We also revised the proposed regulations to require the bureau to use newly purchased prenumbered bingo balls.<sup>8</sup> In addition, the cage that we will use to randomly draw the eight commissioners will have a drop function that releases one ball at a time. Thus, a human being is not involved in drawing the balls from the cage. We therefore did not make any changes to address the final concern relating to an individual drawing the balls. Finally, to further address concerns about transparency, the revised proposed regulation now requires that the balls being used in the drawing shall be delivered to the drawing in the manufacturer’s original packaging for the public to observe.

We believe these revisions address the concerns about the process for randomly drawing the eight commissions, and that they provide greater transparency to the process.

A redline version of this revised proposed regulation may be viewed [HERE](#).

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<sup>8</sup> Our research indicates that the bureau can purchase prenumbered balls.

## **Proposed Regulation 60827. Relevant Analytical Skills (Formerly Proposed Regulation 60826)**

We received several comments about this proposed regulation. Those comments generally raised concerns about some language in the proposed regulation having the effect of improperly excluding individuals who have the relevant analytical skills to perform the duties of a commissioner. As the comments are varied, we address each of them below.

We received comments that applying the VRA should be called out specifically as an ability that is required for performing the duties of a commission member. We agree and have revised the proposed regulation accordingly.

Several comments raised concerns about the regulation's characterization in subdivision (c)(1)(A) that the statistical information a commissioner will need to read and understand is "complex." Similar concerns were raised about the language in subdivision (c)(2)(B) that calls for an applicant to have "[f]amiliarity with using . . . sophisticated software." These commenters complained that this language in the regulation sets the bar for qualifying to serve on the commission at a level that is too high. After consulting with a redistricting expert, we agree with the concerns and have revised the regulation accordingly.

Other suggested revisions to the proposed regulation include clarifying that commissioners will need to assess the credibility of the information provided by staff, consultants, and members of the public. We agree that this suggestion adds further clarity to the proposed regulation and have revised the regulation accordingly.

Another comment suggested that the phrase describing the ability to resolve complex problems involving "factual ambiguities" is unclear. We agree and have added additional clarifying language to subdivision(c)(2)(D). Finally we received a comment raising a concern about the provision relating to working effectively as a member of a group to promote redistricting decisions. More specifically, the commenter questioned whether including "strong oral communication skills" could unintentionally discriminate against individuals with certain disabilities or those for whom English is a second language. We agree with that concern and have revised the regulation accordingly.

A redline version of this revised proposed regulation may be viewed [HERE](#).

## **Proposed Regulation 60832. Training of Panel Members**

We received a few comments about the need to provide training to the panel, particularly with respect to the VRA. Although we had already planned to provide training to the panel, in order to ensure that the commenters are aware of the bureau's plan for providing such training, we have added this proposed regulation expressly requiring the training. We believe that this proposed regulation will enhance the transparency of the process for selecting the members of

the commission, as well as ensure that the panel members are provided with the type of training they need to carry out their responsibilities.

A redline version of this revised proposed regulation may be viewed [HERE](#).

### **Proposed Regulation 60833. Duties of Panel Members (Formerly Proposed Regulation 60832)**

We received a few comments suggesting that we need to clearly limit communications between panel members and applicants outside of the specified application process. Likewise, the comments suggested that we need to clearly limit panel members' discussions of specific applicants and application materials to discussions between panel members and staff and to discussions between the panel members themselves at public hearings. We agree that this proposed regulation regarding the duties of panel members would benefit from adding these restrictions on communications. We also revised the proposed regulation to clarify that the duties listed in the regulation are in addition to the duties set forth in section 8252, subdivision (d) of the Government Code.

A redline version of this revised proposed regulation may be viewed [HERE](#).

### **Proposed Regulation 60842. General Requirements Applicable to Every Phase of the Application Process**

We received some comments raising privacy concerns about posting applications and related materials on the bureau's website. The comments requested that we specifically state in the regulation what portions of the application materials we will not post on the bureau's website. Additionally, the comments requested that we not publicly release residence addresses, birth date information (including age or year of birth), and the names of family members under the age of 18. Finally, the commenters raised concerns that if we do not address their concerns in the regulations, it may impact the number of people who are willing to serve as commissioners.

While the bureau has substantial control over what information it posts on its website, it cannot by regulation establish new rules for what information may or may not be released to the public. Instead, the California Public Records Act (the "CPRA")<sup>9</sup> dictates what must be released and what is exempt from disclosure. In addition, numerous federal and state laws also address privacy issues, and we must take those laws into account.<sup>10</sup> Given that what we may or are required to release is governed by the CPRA and numerous federal and state laws pertaining to privacy, we

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<sup>9</sup> Government Code section 6250 et seq.

<sup>10</sup> For example, the California Constitution (Art. 1, §1); the California Information Practices Act (Civil Code §1798 et seq); the Medical Information Confidentiality Act of California (Civil Code §56 et seq.; the Health Insurance Portability and Accountability Act of 1996 (45 C.F.R. §160 & 164), and the Family Educational Rights and Privacy Act of 1974 (20 U.S.C. §1232g), to name a few.

believe the most prudent way to address the concerns of the commenters is to clarify in this regulation that what the bureau may or may not release is subject to those laws. Adding to the wisdom of this approach is the consideration that the protection of private information is an area of that is constantly evolving with the latest developments in technology.

Additionally, the statutes the bureau operates under provide bureau officers and employees with broad access to the records of state and local government, as well as public entities. Under these provisions of law, the bureau's officers and employees have "stand in the shoes" authority that provides them with access to the records and information of the entities they audit just as the officers and employees of the entities have access.<sup>11</sup> To protect the confidential information the bureau therefore receives, and consistent with state and federal law, the bureau has developed a very specific policy for handling the most sensitive of records and information. Thus, the bureau is uniquely situated and well-versed in handling and protecting sensitive and confidential information. Accordingly, in the revisions to the proposed regulations, we reference the bureau's policies for protecting confidential information from inadvertent public disclosure.

While we are sensitive to having the names of individuals under 18 on the Internet, we believe that the CPRA would require our office to disclose those names if we received a request for that information from the public. In addition, we believe that the posting of the names of individuals under 18 is mitigated by the fact that we will not indicate the age of those persons, and in fact, we will not even gather that information. Further, we are not posting residence addresses of applicants and their immediate family members on the Internet. Finally, with the rise of the Internet, it is fairly common to see the names of minors on the Internet with far more detail, for example high school students who play sports are often identified by name, age or class rank, and school, sometimes with a photograph of the minor being included.

We believe these revisions to the proposed regulations will provide protection of private information concerning applicants in a manner consistent with state and federal law.

A redline version of this revised proposed regulation may be viewed [HERE](#).

### **Proposed Regulation 60846. Written Public Comments and Responses**

Comments from the President Pro Tempore of the Senate and the Speaker of the Assembly expressed concerns about the timely posting of information about applicants on the bureau's website. This is because legislative leaders have a role in the selection of the commissioners, as they may strike up to 24 of the 60 applicants the panel identifies as finalists for selection to the commission. Consequently, they have a keen interest in learning about the applicant pool as the process evolves. While the commenters have requested that we provide specific timelines, we cannot anticipate the volume of applications that we will receive. Thus, rather than providing specific timelines, we have revised the regulation to require that the bureau post, as soon as practicable, materials relating to the applicants. The term "practicable" means, "capable of being put into practice or of being done or accomplished." We believe that this revision to the proposed regulation will provide assurance to the commenters that we will post information

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<sup>11</sup> Government Code section 8545.2; see also Government Code section 8545.1

about the applicants as soon as practicable, and we have made a similar conforming change to regulation 60849.

A redline version of this revised proposed regulation may be viewed [HERE](#).

### **Proposed Regulation 60847. Phase II Supplemental Application**

We received a few comments requesting that a minimum time period be established for the bureau's acceptance of Phase II supplemental applications. We carefully reviewed everything that needs to be accomplished for the bureau and the panel to meet the deadlines established by the Act and concluded that we could extend the Phase II supplemental application period for a minimum of 30 days. We note that this will not preclude an applicant from planning how he or she will complete the Phase II supplemental application well in advance of the application period, as a draft version of the application is currently available on our website and a final version will be on the bureau's website by December 15, 2009. Thus, applicants will have plenty of time to think through their answers regardless of the length of the actual application period. In addition, while the proposed regulation provided for applicants to disclose their economic interests, it provided no details regarding how that will be done. So we added a provision to this regulation and regulation 60848 specifying certain applicants who the panel identifies as likely to be selected for interview will be required to complete a statement of Economic Interests (Form 700).

A redline version of this revised proposed regulation may be viewed [HERE](#).

### **Proposed Regulation 60848. Phase II Supplemental Application Review**

We received a comment suggesting that we revise subdivision (f) of proposed regulation 60848, which relates to the panel's consideration of diversity during the application process, to specify that "diversity" is "as described in the most recently available demographic information including data from the United States Census Bureau and the California Department of Finance." We understand the need for guidance to the panel on this issue and believe that the most appropriate place for that guidance is during the training we will provide to the panel. As discussed earlier, we have added a proposed regulation that requires training (proposed regulation 60832), and that training will address California's diverse demographics and geography.

A redline version of this revised proposed regulation may be viewed [HERE](#).

### **Proposed Regulation 60852. Phase IV: Applicant Name Striking Process**

Comments from the President Pro Tempore of the Senate and the Speaker of the Assembly expressed concern about the shortness of the time period in which the legislative leaders must determine how they will exercise their right to strike names from the list of 60 applicants identified by the panel as finalists for selection to the commission. That time period is 45 days; a relatively short time period when compared to the months the panel will have to review the applications. While we appreciate their concern, there is very little we can do to modify the

timelines for this redistricting cycle. In accordance with the Act, we have proposed a very detailed, transparent, and thoughtful application process. In addition, because this is a new process, we have had to create the application process from scratch, by developing regulations, holding public meetings and hearings on the regulations, developing policies and procedures for the panel, issuing requests for proposals for necessary services, developing and implementing an outreach plan, creating a new website and training, and so on. While we wish we could accommodate this request from the commenters, the amount of time between the passage of the Act and the date by which the Citizens Redistricting Commission must be formed leaves too little flexibility in the timelines for what must be accomplished under the Act.

While we may find some flexibility in our timeline if it turns out that we have a fairly limited applicant pool, as we do not know how many applications we will receive, it is unwise to make any commitments through our regulations to transmit the names of the 60 finalists to the legislative leadership prior to the statutory deadline of October 1, 2010.

A redline version of this revised proposed regulation may be viewed [HERE](#).

### **Conclusion**

Working with the valuable comments and suggestions provided to us by members of the public, we believe that we have greatly strengthened the draft regulations we previously proposed for clarifying and implementing the Act by making the many revisions to the regulations discussed in this memorandum. We have greatly appreciated the public's participation in this rulemaking process.