

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

August 9, 2010

NOTICE OF MODIFICATIONS TO TEXT OF PROPOSED REGULATIONS

On April 16, 2010, 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 June 1, 2010.

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 August 24, 2010**. Please send written comments to:

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AVAILABILITY AND LOCATION OF RULEMAKING FILE AND THE FINAL STATEMENT OF REASONS

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.wedrawthelines.ca.gov/regulation.html.

Text of Modified Proposed Regulations

The bureau has illustrated changes to the originally proposed text in the following manner:

Regulation language originally proposed is single underlined (example); deletions from the existing language are shown in single strikeout (~~example~~); new additions to the language originally proposed are **bold and double-underlined** (**example**); and new deletions from the existing language or the language originally proposed is shown in **bold with double strikeout** (~~**example**~~). Unchanged text surrounding these changes has been provided for context.

§ 60804.1. Appointive Federal, State, or Local Public Office

“Appointive federal, state, or local public office” means the following:

(a) Appointive federal or state public office means a federal or state office that may be filled by appointment by the Governor, any member or members of the Legislature, ~~or any member or members of the State Board of Equalization, or any Senator or Representative in the Congress of the United States elected from California.~~

(b) Appointive local public office means a public office at the county or city level in California, as defined in California Code of Regulations, title 2, section 60815.1, that satisfies all of the following requirements:

(1) Is filled by appointment by a person or persons holding elective public office at the county or city level in California.

(2) Is an office in which the officeholder serves either for a fixed term or at the pleasure of the appointing authority.

(3) Entitles the officeholder to do either or both of the following:

(A) Make governmental decisions **affecting persons throughout the jurisdiction of the county, city, special district, school district, joint powers authority, or other political subdivision of the state to which the office belongs and not just affecting persons in a particular geographic area or a particular industry, trade, or profession located within the jurisdiction.**

(B) Receive compensation in an amount greater than \$5,000 per year, or receive per diem payments at a rate greater than \$100 per day.

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

§ 60815.1. Elective Public Office at the Federal, State, County, or City Level in This State

“Elective public office at the federal, state, county, or city level in this State” means the following:

(a) Elective public office at the federal level means an office of Senator or Representative in the Congress of the United States that may be filled by an election in California.

(b) Elective public office at the state level means an “elective state office” in California, as defined in section 82024 of the Government Code.

(c) Elective public office at the county or city level in this state means a public office at the county or city level in California that may be filled by an election.

(d) Public office at the county level means an office of county government or an office of a special district, school district, joint powers authority, or other political subdivision of the state whose boundaries coincide with the boundaries of a county or whose boundaries include at least one entire county. **A public office at the county level does not mean a position within a non-profit organization, quasi-governmental entity, or neighborhood council.**

(e) Public office at the city level means an office of city government or an office of a special district, school district, joint powers authority, or other political subdivision of the state whose boundaries coincide with the boundaries of a city or whose boundaries include at least one entire city but do not coincide with the boundaries of a county or include an entire county. **A public office at the city level does not mean a position within a non-profit organization, quasi-governmental entity, or neighborhood council.**

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

§ 60820.1. Paid Staff for the Legislature or Any Individual Legislator

“Paid staff for the Legislature or any individual legislator” means the following:

(a) Paid staff for the Legislature means being a person employed by and receiving compensation from the Legislature.

(b) Paid staff for any individual legislator means being a person employed by and receiving compensation from a member of the Legislature, or a business entity in which a member of the

Legislature holds a controlling interest, without regard for whether the duties of employment are related to seeking or holding legislative office.

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

§ 60841. Overview of the Application Process

The application process shall consist of ~~five~~ six 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 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 the first eight members of the commission, ~~and they shall select the final six commissioners from the remaining pool of applicants.~~

(f) During Phase VI, the first eight members of the commission shall select the final six members of the commission.

[Note: Authority cited: *Section 8546, Government Code*. Reference: *Section 2, Article XXI, California Constitution*; *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~~ 14 members of the commission are selected, 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 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), including, ~~but not limited to,~~ 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 in the evaluation of the applicant during all subsequent phases of the application process during which the applicant remains in a pool of applicants ~~for the panel's evaluation~~ being evaluated for selection to the commission. Comments and responses received

after the deadline for receiving comments during a particular phase of the application process may be considered ~~by the panel in the evaluation of the applicant~~ during a subsequent phase provided the applicant remains in a pool of applicants ~~for the panel's evaluation~~ being considered for selection to the commission.

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

§ 60853. Phase V-Random Drawing of First Eight ~~Commissioners~~Members of the Commission

(a) During Phase V of the application process, the State Auditor, **as provided in section 8252, subdivision (f) of the Government Code**, 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 California Code of Regulations, title 2, section 60825.

(b) Notwithstanding subdivision (a), 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.

(d) As soon as practicable following the random drawing of the first eight members of the commission, the bureau shall notify the applicants of their selection and post on its website the names, party affiliations, and relevant qualifications of those first eight members.

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

~~(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.}~~

§ 60855. Training of the First Eight ~~Commissioners~~Members of the Commission

Prior to any of the first eight members of the commission performing the duties necessary to select the final six members of the commission, the bureau shall provide the first eight members of the commission with training in preparation for the performance of those duties. The training shall include the following subjects:

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

(b) The duties of the first eight members of the commission in selecting the final six members of the commission as described in the 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 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.

[Note: Authority cited: Section 8546, Government Code. Reference: Section 2, Article XXI, California Constitution; Sections 8252 and 8253, Government Code.]

§ 60856. Administrative Support for the First Eight ~~Commissioners~~ Members of the Commission

(a) The bureau shall provide administrative, technical, and clerical support to the first eight members of the commission as necessary for them to carry out their responsibility under the Voters FIRST Act to select the final six members of the commission. This support shall include the provision of office equipment, facilities, and staff sufficient to perform the following tasks:

(1) Collect and manage the application materials and recorded interviews provided to the first eight members of the commission pursuant to California Code of Regulations, title 2, section 60854.

(2) Gather additional information as provided in California Code of Regulations, title 2, section 60860, subdivision (a).

(3) Schedule public meetings, prepare meeting agendas, and post on the bureau's website the notices and agendas for meetings.

(4) Make travel arrangements.

(5) Process claims for reimbursement and compensation.

(6) Provide technical and administrative support for public meetings.

(7) Communicate with the public regarding decisions made by the first eight members of the commission.

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

(c) The bureau shall retain the records concerning the work of the first eight members of the commission in selecting the final six members of the commission for a period of at least 12 years.

[Note: Authority cited: Section 8546, Government Code. Reference: Section 2, Article XXI, California Constitution; Sections 8252, 8253, 8253.5, and 8253.6 Government Code.]

§ 60857. Payments to First Eight Members of the Commission

For the purposes of section 8253.5 of the Government Code, which entitles members of the commission to receive compensation and reimbursement for expenses, “commission business” and “duties performed pursuant to this act” shall include the activities of the first eight members of the commission in training for the selection and selecting the final six members of the commission.

[Note: Authority cited: Section 8546, Government Code. Reference: Section 8253.5 Government Code.]

§ 60858. Phase VI Meetings of the First Eight Members of the Commission

(a) The authority of the first eight members of the commission is limited to selecting the final six members of the commission. The first eight members of the commission therefore may only take those actions that are necessary for the selection of the final six members of the commission, and all other actions must be deferred until the full 14-member commission is established.

(b) The first eight members of the commission shall meet in Sacramento for the purpose of selecting the final six members of the commission. The first eight members shall schedule and hold one or more meetings for the purpose of selecting the final six members of the commission by no later than December 31, 2010.

(c) Five of the first eight members of the commission shall constitute a quorum for a meeting of the first eight members of the commission.

(d) The first eight members of the commission are subject to the provisions of the Bagley-Keene Open Meeting Act (commencing with section 11120 of the Government Code). Consistent with that act, the first eight members of the commission:

(1) May, prior to any meeting, independently review the application materials relating to the remaining applicants.

(2) Shall comply with the notice requirements for meetings that are contained in the Bagley-Keene Open Meeting Act, but are not subject to the notice requirements specified in subdivision (a)(1) of section 8253 of the Government Code, as those requirements only apply to the full 14-member commission.

(3) Shall conduct all deliberations in public and not meet in closed session except as permitted by the Bagley-Keene Open Meeting Act.

(e) During their first meeting, the first eight members of the commission shall, in open session, elect one of the members to serve as a temporary chair and another member to serve as a temporary vice chair. The temporary chair shall preside over the meetings held by the first eight members of the commission for the purpose of selecting the final six members. The **temporary** vice chair shall preside over meetings in the **temporary** chair's absence. The temporary chair and the **temporary** vice chair shall not be registered with the same political party. The temporary chair and **temporary** vice chair shall be elected by the affirmative vote of at least five of the first eight members, including no less than two affirmative votes from the members who are registered with the political party having the greatest number of registered voters, two affirmative votes from the members who are registered with the political party having the second greatest number of registered voters, and no less than one affirmative vote from a member who is not registered with either of those two parties. The first eight members of the commission may replace the temporary chair or the temporary vice chair through the same voting process. In the absence of both the **temporary** chair and the **temporary** vice chair, an acting chair may be elected to preside over a meeting on the affirmative vote of a majority of the members present and voting.

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

(g) The bureau shall record, through the use of audio and visual equipment, the meetings of the first eight members of the commission in which they deliberate about or select the final six members of the commission. Such meetings will be made available for viewing on the bureau's website either live or as soon as practicable after completion.

[Note: Authority cited: Section 8546, Government Code. Reference: Section 2, Article XXI, California Constitution; Sections 8252 and 8253, Government Code.]

§ 60859. Communications Between the First Eight Members of the Commission and Members of the State Board of Equalization, Legislature, and Congress

Beginning from the date of their selection to serve on the commission, **and continuing throughout Phase VI of the application process,** the first eight members of the commission shall not communicate **outside of a public meeting** with any member of the State Board of Equalization, member of the Legislature, or member of Congress elected from California, or their representatives regarding the selection of the final six members of the commission or their role as members of the commission. If a member of the State Board of Equalization, member of the Legislature, or member of Congress elected from California wishes to present testimony or public comment regarding an applicant during the time that the first eight members are selecting the final six members, such testimony or public comment shall only be accepted **if it is presented orally at a public meeting or presented** in writing and disclosed to the public **either before or ~~accepted~~ during ~~an open,~~ a public meeting.**

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

§ 60860. Phase VI Selection of the Final Six Members of the Commission

(a) Prior to the first meeting at which the first eight members of the commission begin deliberating about the selection of the final six members of the commission, the members shall review the application materials provided by the bureau for each of the applicants remaining in the applicant pool. ~~The members may also~~ **Any of the first eight members of the commission** at any time during the selection process, ~~inquire about or~~ **also may ask the bureau to** seek additional information from or about the applicants remaining in the applicant pool. This may include ~~requiring asking~~ an applicant to submit written responses to questions or to participate in an interview conducted by the first eight members of the commission at a public meeting. **However, the bureau shall retain discretion to decline any request that the State Auditor finds to be unduly burdensome for the bureau, unduly burdensome for the applicant(s) subject to the request, or otherwise would be detrimental to the timely completion of the application process.** The bureau shall pay the reasonable and actual expenses for an applicant to attend ~~such an any~~ interview, as provided in California Code of Regulations, title 2, section 60849, subdivision (c).

(b) As the final six members of the commission shall be chosen to ensure the commission reflects California's diversity, as well as on the basis of relevant analytical skills and ability to be impartial, the first eight members of the commission shall vote to select the final six members of the commission as a slate of six applicants.

(c) Any of the first eight members of the commission may propose a slate of six applicants for selection to the commission. While a member may propose more than one slate of six applicants during the course of the selection process, no member may have more than one slate of six applicants up for consideration by the other members at a particular time.

(d) Each slate of six applicants shall consist of two applicants registered with the political party having the greatest number of registered voters, two applicants registered with the political party having the second greatest number of registered voters, and two applicants not registered with either of those two parties. Each slate shall also be designed to ensure that the commission reflects California's diversity while being composed of persons having the relevant analytical skills and ability to be impartial needed by the commission. However, in designing a slate, neither formulas nor specific ratios may be applied to ensure the diversity of the commission.

(e) A slate may be modified by the member proposing it at any time prior to the slate being voted upon by the eight members. However, whenever a slate is modified, neither formulas nor specific ratios may be applied to ensure the diversity of the commission.

(f) The first eight members of the commission shall vote to approve a slate based on whether they believe it will ensure that the commission reflects California's diversity while being composed of persons having the relevant analytical skills and ability to be impartial needed by the commission.

(g) The applicants listed on the first slate of six applicants that is approved by at least five affirmative votes as provided in subdivision (g) of section 8252 of the Government Code, shall become the final six members of the commission.

(h) As soon as practicable following the selection of the final six members of the commission, the bureau shall notify the applicants of their selection and post on its website the names, party affiliations, and relevant qualifications of those commissioners.

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

§ 60861. Assisting the Commission To Become Functional

After the 14 members of the commission have been selected, the bureau will cooperate with the commission and with the Secretary of State in order to facilitate the commission becoming fully functional.

[Note: Authority cited: Section 8546, Government Code. Reference: Section 8252, Government Code; Section 8253.6, Government Code.]

§ 60862. Restrictions on Applicants Selected To Serve on the Commission

For the purposes of subdivision (c)(6) of section 2 of Article XXI of the California Constitution, the 10 and 5-year restriction on members of the commission holding elective and appointive public office shall not extend beyond the appointment of the first member of the succeeding commission as referenced in subdivision (c)(4) of section 2 of Article XXI of the California Constitution.

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

§ 60863. 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).

(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) **In creating a new subpool of applicants, the panel shall comply with the requirements of subdivisions (d) and (e) of section 8252 of the Government Code, with the bureau establishing a date for receiving from the Secretary of the Senate and the Chief Clerk of the Assembly a joint list of the applicants remaining after the Legislative Leaders have exercised their right to exercise strikes.** 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.]