

**NOTICE OF PROPOSED RULEMAKING**

**TITLE 2, DIVISION 10: CALIFORNIA CODE OF REGULATIONS  
REGARDING THE VOTERS FIRST ACT**

**NATURE OF PROCEEDING**

NOTICE IS HEREBY GIVEN that the State Auditor is proposing to adopt the following sections in Title 2, Division 10 of the California Code of Regulations: 60804.1, 60815.1, 60820.1, 60856, 60857, 60858, 60859, 60860, 60861, 60862, and 60863; to amend sections, 60841, 60846, 60853 and 60855.

A public hearing has been scheduled for June 1, 2010. The hearing will be held beginning at 10 a.m. at Bureau of State Audits, 555 Capitol Mall, 5<sup>th</sup> Floor Training Room, Sacramento, California 95814.

Notice is also given that any interested person or his or her duly authorized representative may submit written comments relevant to the proposed regulations to:

Gloria Gamino, Legal Analyst  
Bureau of State Audits  
555 Capitol Mall, Suite 300  
Sacramento, California 95814  
Telephone (916) 445-0255  
Fax: (916) 319-9295

All written comments must be received by the Bureau of State Audits (the "bureau") no later than 5 P.M. on June 1, 2010, the final day of the written comment period, in order for the comments to be considered by the bureau.

Following the written comment period, the State Auditor may adopt the proposed regulations substantially as described in this notice. If modifications are made that are sufficiently related to the originally proposed text, the full modified text with changes clearly indicated shall be made available to the public for at least 15 days prior to the date on which the bureau adopts the resulting regulations. A request for copies of any modified regulations should be made to the contact person named below. The bureau will accept written comments on any modified regulations for 15 days after the date on which they are first made available to the public.

**AUTHORITY AND REFERENCE**

Pursuant to the authority vested in it by Government Code section 8546, and to implement, interpret, or make more specific article XXI, section 2 of the California Constitution and Government Code sections 8252, 8252.5, 8253, 8253.5 and 8253.6, the State Auditor proposes to adopt the regulations identified under the heading Nature of Proceeding above.

## **INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW**

### **The Voters FIRST Act**

The Voters FIRST Act, approved by the voters in the November 4, 2008 general election as Proposition 11 (the “Act”)<sup>1</sup>, requires the State Auditor to initiate an application process for selecting the members of the Citizens Redistricting Commission (the “commission”). The commission, composed of fourteen members, is responsible for redrawing district lines for the Senate, Assembly, and State Board of Equalization based on the most recent census information. To serve as a member of the commission, an applicant must be a registered California voter who has voted in at least two of the last three statewide general elections prior to submitting an application and has been continuously registered with the same political party, or no political party, for at least five years immediately prior to appointment. Additionally, an applicant cannot have a conflict of interest, as defined by the Act. The Act also makes those who are selected to serve on the commission ineligible to hold elective public office at the federal, state, county, or city level for 10 years, and ineligible to hold appointive federal, state, or local public office for five years, from the date of appointment to the commission.

The Act requires the State Auditor to select the Applicant Review Panel (the panel) that will review the applications of persons wishing to serve on the commission. On November 16, 2009, the State Auditor selected this panel by randomly drawing the names of three auditors from a pool of qualified independent auditors who are licensed by the State Board of Accountancy and have ten or more years of experience working as an independent auditor. Under the Act, the panel evaluates all of the applications submitted by eligible applicants, and based on that evaluation, identifies a pool of 60 of the most qualified applicants. This pool of 60 applicants must consist of three subpools of 20 applicants each, with one subpool comprised of applicants registered with the state’s largest political party, another subpool comprised of applicants registered with the state’s second largest political party, and a third subpool comprised of applicants not registered with either of the state’s two largest political parties. The State Auditor sends a list of the names of the 60 most qualified applicants to specified leaders in the Legislature who may strike not more than eight applicants from each of the three subpools. The legislative leaders are then required to return the remaining names to the State Auditor, who randomly draws from the names of applicants not stricken in each of the subpools three applicants registered with the largest political party, three applicants registered with the second largest political party, and two applicants not registered with either of the two largest political parties. These applicants drawn by the State Auditor become the first eight members of the commission. Those first eight members of the commission select the final six members of the commission from the applicants remaining in the three subpools.

The State Auditor adopted regulations on October 20, 2009 that relate to the following subject areas of the Act: the creation and operation of the panel; a comprehensive outreach program designed to increase awareness of the opportunity to serve on the commission; several phases of

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<sup>1</sup> The Voters FIRST Act is contained in article XXI of the California Constitution and sections 8251 through 8253.6 of the Government Code. All subsequent statutory references are to the Government Code, unless otherwise indicated.

the application process; the method for screening applicants to determine whether they meet the eligibility requirements to serve on the commission; the process for evaluating applicants to identify the pool of 60 of the most qualified applicants; the procedure for transmitting a list of the names of the 60 finalists to the Legislature; and the process for randomly drawing the first eight members of the commission. (Cal. Code Regs., tit. 2, § 60800 et seq.). This prior rulemaking package did not address the final stage of the application process, wherein, pursuant to section 8252, subdivision (g), the first eight randomly selected members of the commission choose the final six members of the commission. The prior regulations did not address the provisions of the Act that make those who are selected to serve on the commission ineligible to hold certain elective or appointive public offices, for ten and five years respectively, from the date of appointment. The prior regulations also did not address the provisions of the Act that restrict a person who is selected to serve on the commission from serving as staff to the Legislature or a Member of the Legislature for five years from the date of appointment.

### **Proposed Regulations**

The Act provides little guidance regarding how the final stage of the application process shall operate and how selected applicants will make the transition to a fully functional commission. It also uses various terms in provisions restricting certain activities of commission members without clearly defining the meaning of such terms. Therefore, consistent with the State Auditor's authority to adopt regulations related to the application process, the State Auditor is commencing this rulemaking process to implement the provisions of the Act in a way that is consistent with the intent of the voters and to provide guidance and clarity to potential applicants and the general public. As an overview, the State Auditor is proposing a set of regulations regarding the operation of the final stage of the application process, and the restrictions on the activities of commissioners after they are appointed, that will address several subject areas including the following:

- The terms used in the provisions that make a person who is selected to serve on the commission ineligible, for ten years from the date of appointment, to hold elective public office at the federal, state, county, or city level.
- The terms used in the provisions that make a person who is selected to serve on the commission ineligible, for five years beginning from the date of appointment, to hold appointive federal, state, or local public office.
- The terms used in the provisions that make a person who is selected to serve on the commission ineligible, for five years beginning from the date of appointment, to serve as paid staff for the Legislature or any individual legislator.
- The requirements for the meetings held by the first eight members of the commission to select the final six members, including requirements related to providing notice of meetings, meeting openly, and selecting a temporary chair and vice-chair.
- The requirements for providing the first eight members of the commission with support and training related to the task of selecting the final six members.

- The requirement to provide the first eight members of the commission with compensation and reimbursement for expenses as they conduct the business of selecting the final six members.
- The process for selecting the final six members of the commission.
- Other matters pertinent to transitioning from the application process overseen by the State Auditor to the full functioning of the Citizens Redistricting Commission.
- Conforming and clarifying changes to existing regulations that pertain to the application process, including the regulations that pertain to the submission of public comments about applicants and conducting a random drawing to select the first eight members of the commission.

#### **LOCAL MANDATE**

This proposal does not impose a mandate on local agencies or school districts.

#### **FISCAL IMPACT ESTIMATES**

This proposal does not impose costs on any local agency or school district for which reimbursement would be required pursuant to Part 7 (commencing with section 17500) of Division 4 of the Government Code. This proposal does not impose other nondiscretionary cost or savings on local agencies. This proposal does not result in any cost or savings in federal funding to the state.

#### **COST OR SAVINGS TO STATE AGENCIES**

No additional costs or savings to state agencies are anticipated.

#### **BUSINESS IMPACT/SMALL BUSINESSES**

The State Auditor has made an initial determination that this proposed regulatory action would have no significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states. The proposal does not affect small businesses as defined by section 11342.610 of the Government Code. The determination that this proposal would not affect small businesses is based on the fact that the proposed regulations implement provisions of the Act that address the final step in the application process, whereby the first eight members of the commission select the final six members, as well as provisions that place restrictions on those persons who are ultimately selected to serve on the commission. Based on the limited scope of these regulations, the State Auditor has determined that none of the proposed regulations would have a significant adverse economic impact on business.

#### **ASSESSMENT REGARDING EFFECT ON JOBS/BUSINESS**

The State Auditor has made an initial determination that this proposed regulatory action will not have any impact on the creation of jobs or new businesses or the elimination of jobs or existing businesses or the expansion of businesses in the State of California.

**COST IMPACTS ON REPRESENTATIVE PERSON OR BUSINESS**

The State Auditor is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

**EFFECT ON HOUSING COSTS**

None.

**PUBLIC DISCUSSIONS OF PROPOSED REGULATIONS**

The State Auditor conducted a Call for Comments and solicited suggestions from the public regarding the scope and content of these proposed regulations. That Call for Comments was posted at [www.WeDrawtheLines.ca.gov](http://www.WeDrawtheLines.ca.gov) and sought comments from January 15, 2010 through February 15, 2010.

**ALTERNATIVES CONSIDERED**

The State Auditor has determined that no reasonable alternative that she has considered or that has otherwise been identified and brought to her attention would be more effective in carrying out the purpose of the proposed action, or would be as effective and less burdensome to affected private persons than the proposed action.

**CONTACT PERSON**

Inquiries relating to this proposed action and written comments may be directed to:

Gloria Gamino, Bureau of State Audits, 555 Capitol Mall, Suite 300, Sacramento, California 95814, Telephone (916) 445-0255, Fax: (916) 319-9295

Inquiries may also be directed to the bureau’s designated backup contact person:

Sharon Brumley, Bureau of State Audits, 555 Capitol Mall, Suite 300, Sacramento, California 95814, Telephone (916) 445-0255, Fax: (916) 319-9295

**INITIAL STATEMENT OF REASONS AND INFORMATION**

The bureau has prepared an initial statement of reasons for the proposed action and has available all the information upon which the proposed action is based.

**TEXT OF PROPOSAL**

Copies of the exact language of the proposed regulations and of the initial statement of reasons, and all of the information on which this proposal is based, may be obtained by making a request to the contact person listed above. These documents may also be viewed and downloaded from the website maintained by the bureau at [www.WeDrawtheLines.ca.gov](http://www.WeDrawtheLines.ca.gov).

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

All the information on which the proposed regulations are based is contained in the rulemaking file located at 555 Capitol Mall, Suite 300, Sacramento, California 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.

**WEB SITE ACCESS**

Materials regarding this proposal can be found at [www.WeDrawtheLines.ca.gov](http://www.WeDrawtheLines.ca.gov).