

**STATE OF CALIFORNIA
BUREAU OF STATE AUDITS
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SACRAMENTO, CA 95814**

**TITLE 2, DIVISION 10, CALIFORNIA CODE OF REGULATIONS
ADOPT SECTIONS 60804.1, 60815.1, 60820.1, 60856, 60857, 60858, 60859, 60860, 60861,
60862, and 60863; to amend sections, 60841, 60846, 60853 and 60855.**

REGARDING THE VOTERS FIRST ACT

INITIAL STATEMENT OF REASONS

INTRODUCTION

The Voters FIRST Act

The Voters FIRST Act, approved by the voters in the November 4, 2008 general election as Proposition 11 (the “Act”)¹, 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

¹ 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.

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 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.

SPECIFIC PURPOSE OF EACH SECTION – GOVERNMENT CODE SECTION 11346.2, SUBDIVISION (b)(1)

This regulatory proposal would adopt or amend the following sections in title 2, division 10 of the California Code of Regulations.

The specific purpose of each adoption, and the rationale for the determination that each adoption is reasonably necessary to carry out the purpose for which it is proposed, together with a description of the public problem, administrative requirement, or other condition or circumstance that each adoption or amendment is intended to address, is as follows:

Proposed Section 60804.1 defines the phrase “appointive federal, state, or local public office” as used in the California Constitution, Article XXI, section 2, subdivision (c)(6) (hereafter “subdivision (c)(6)”. Subdivision (c)(6) makes an individual who is selected to serve on the commission ineligible to hold appointive federal, state, or local public office for five years from the date of appointment. Subdivision (c)(6) does not define any of the terms used in the quoted phrase. Moreover, those terms do not have a universally understood meaning.

Giving meaning to the terms used in the quoted phrase is very significant because this will dictate how the restrictions on holding office that are imposed by subdivision (c)(6) will operate. In giving meaning to these terms, we have been guided by paragraph (1) of subdivision (c) of section 2, of the California Constitution, which declares that the process for selecting the members of the commission “is designed to produce a Citizens Redistricting Commission that is independent from legislative influence.” We also have been guided by the language of the findings and declaration of purpose found in the uncodified section 2 of the Act as it appeared in the Official Voter Information Guide for the November 4, 2008 general election. Subdivision (b) of section 2 makes it clear that one of the purposes of the Act is to prevent politicians from influencing the redistricting process such that districts are drawn to serve the politicians’ interests rather than the interests of the communities they serve. These statements indicate the clear intent of the voters that those who serve on the commission are expected to be free from partisan political influence as they perform their work. Related to that, the intent of the office holding restrictions in subdivision (c)(6) is to ensure that appointment or election to public office does not come as a reward for redistricting decisions that a commissioner may make while serving on the commission. Similarly, the restrictions on employment as paid staff to the Legislature or a Member of the Legislature further reflect the voters’ intent that those who serve on the commission be removed from partisan political influence. As we discuss in the memorandum to the State Auditor, dated April 6, 2010, explaining this proposed regulation, (available at www.WeDrawtheLines.ca.gov), we propose defining “appointive federal, state, or local public office” in a way that further defines these terms consistent with the voters’ intent and within the plain language of the Act.

The proposed definition is necessary to provide clarity and notice to applicants and to the general public regarding the legal effect of the restrictions contained in subdivision (c)(6) as they pertain to those who apply to serve and ultimately are selected to serve as members of the commission. This proposed regulation is also essential to ensuring that the application process is effective and results in the selection of 14 members who are fully informed regarding the rules that apply to them and who are willing to abide by those rules.

Proposed Section 60815.1 defines the phrase “elective public office at the federal, state, county, or city level in this state” as used in subdivision (c)(6). Subdivision (c)(6) provides that an individual who is selected to serve on the commission is ineligible to hold elective public office at the federal, state, county, or city level in this state for ten years from the date of appointment to the commission. As with proposed section 60804.1, we have been guided by the intent of the voters and by the plain language of the Act. This proposed regulation is necessary to provide clarity and notice to applicants and the general public regarding the restrictions contained in subdivision (c)(6) as they pertain to those who apply to serve and ultimately are selected to serve as members of the commission. This proposed regulation is also essential to ensuring that the application process is effective and results in the selection of 14 members who are fully informed regarding the rules that apply to them and who are willing to abide by those rules.

Proposed Section 60820.1 defines “paid staff for the Legislature or any individual Legislator” as used in subdivision (c)(6). Subdivision (c)(6) provides that an individual who is selected to serve as a member of the commission is ineligible, for five years from the date of appointment, to

serve as paid staff to the Legislature or to any individual Legislator. The proposed regulation would define and clarify the terms used in this provision. This proposed regulation is necessary to provide clarity and notice to applicants and the general public regarding the restrictions contained in subdivision (c)(6) as they pertain to those who apply to serve and ultimately are selected for service on the commission. This proposed regulation is also essential to ensuring that the application process is effective and results in the selection of 14 members who are fully informed regarding the rules that apply to them and who are willing to abide by those rules.

Proposed Section 60841 amends existing section 60841 to specify that the application process includes a Phase VI, during which the first eight members of the commission will select the final six members of the commission. The existing regulation briefly summarizes each phase of the application process for selecting the members of the commission, but stops short of describing the last phase. The proposed amendments to the regulation add a description of the final phase and make a conforming change to the regulation that recognizes the selection of the final six commissioners as being a distinct phase of the application process. The proposed amendments to the regulation are necessary for clarity and for conformity with the other proposed regulatory changes.

Proposed Section 60846 amends existing section 60846, which pertains to the process for members of the public to submit written comments about applicants and for applicants to respond to those comments, by clarifying that the submission of public comments may occur during all phases of the application process, including Phase VI. The proposed amendments would also make other clarifying changes to the existing regulation. These changes are necessary for clarity and for conformity with other changes proposed by this rulemaking process.

Proposed Section 60853 amends existing section 60853, which pertains to the selection of the first eight members of the commission during Phase V of the application process. The proposed amendments provide that, as soon as practicable following the random drawing of the names of the first eight members of the commission, the bureau shall notify the applicants of their selection and post the names, party affiliations, and relevant qualifications of those commissioners on its website. This proposed change is necessary to provide clarity and notice to applicants and to the general public.

Proposed Section 60855 specifies the training the bureau will provide to the first eight members of the commission before those eight commissioners select the final six members of the commission. This proposed regulation is necessary to provide clarity to the general public and to the first eight members of the commission.

Proposed Section 60856 specifies the types of assistance the bureau will provide to the first eight members of the commission as they engage in the final phase of the application process, whereby they select the final six members of the commission. This proposed regulation is necessary to provide clarity to the first eight commissioners and to the general public. This proposed regulation is also essential in order to fully effectuate the final stage of the application process when the full commission comes into existence.

Proposed Section 60857 specifies that while receiving training and engaged in selecting the final six members of the commission, the first eight members of the commission are entitled to receive the same compensation and reimbursement for expenses that they are entitled to receive when conducting other commission business. This proposed regulation is necessary to provide clarity to the first eight commissioners and to the general public.

Proposed Section 60858 specifies requirements for the meetings held by the first eight members of the commission in order to select the final six members of the commission. The proposed regulation would specify procedures for selecting a temporary chair and vice chair to preside over the meetings of the first eight commissioners and related matters. This proposed regulation provides clarity to the first eight members of the commission and to the general public. The proposed regulation is also essential to fully effectuate the final stage of the application process when the full commission comes into existence.

Proposed Section 60859 further specifies the rules related to communications by the first eight members of the commission. Subdivision (a) of section 8253 prohibits members of the commission and their staff from communicating with anyone outside of an open meeting regarding redistricting matters. Meanwhile, Government Code section 8252, subdivision (d) prohibits members of the Applicant Review Panel from communicating with members of the State Board of Equalization, the Legislature, and Congress regarding their evaluation of applicants. The proposed regulation specifies that as part of the restriction of their communications regarding redistricting matters, the first eight members of the commission are subject to a restriction, similar to that of the panel, regarding their communications about the selection of the final six members of the commission. This proposed regulation is necessary to provide clarity to the first eight commissioners, the members of the State Board of Equalization, the Legislature, and Congress elected from California, as well as the general public that the restrictions on communications about redistricting matters includes restrictions on communications about the selection of the final six members of the commission.

Proposed Section 60860 specifies the procedures that the first eight members must use in selecting the final six members of the commission. Subdivision (g) of section 8252 requires the first eight members to select the final six members, but provides little guidance or specificity regarding the details of that selection. This proposed regulation is necessary to fully implement the application process and to effectuate the intent of the voters that the full commission be reflective of the diversity of California.

Proposed Section 60861 specifies that the bureau will cooperate with the commission and the Secretary of State in order to facilitate the commission becoming fully functional. This proposed regulation provides clarity and is essential to the effective implementation of the Act.

Proposed Section 60862 would further implement and make specific the provisions of subdivision (c)(6). The proposed regulation would provide clarity regarding the legal effect of the office holding restrictions contained in subdivision (c)(6).

Proposed Section 60863 would amend existing section 60855 by renumbering it so the sequence of this regulation conforms with the general sequence of the regulations pertaining to the application process.

OTHER REQUIRED SHOWINGS-GOVERNMENT CODE SECTION 11346.2, subdivision (b)(2)-(4)

Studies, Reports, or Documents Relied Upon - Government Code section 11346.2, subdivision (b)(2): None.

Reasonable Alternatives Considered - Government Code section 11346.2, subdivision (b)(3)(A): The bureau considered various alternatives when drafting these proposed regulations. The alternatives considered include those alternatives presented by interested persons during a Call for Public Comment held earlier this year, which resulted in the submission of written public comments.

Reasonable Alternatives That Would Lessen the Impact on Small Businesses - Government Code section 11346.2, subdivision (b)(3)(B): The proposed regulations do not impact small business.

Evidence Relied Upon to Support the Initial Determination That the Regulations Will Not Have a Significant Adverse Economic Impact on Business - Government Code section 11346.2, subdivision (b)(4): The proposed regulations implement provisions of the Act that address the final step in the application process whereby the first eight members of the Citizens Redistricting Commission select the final six members, and other subject areas related to the application process for selecting the members of the commission. Because of the limited scope of these regulations, the State Auditor determined that none of the regulations would have a significant adverse economic impact on business.