

ATTACHMENT B

Section by Section Description

SUBCHAPTER 1

§ 60800. Ability to Be Impartial

The Act requires that Commission members have the “ability to be impartial,” to conduct themselves with “integrity and fairness” and to act “in a manner that is impartial and that reinforces public confidence in the integrity of the redistricting process.”

Under this section, to be impartial, the Commission members must have the capacity and willingness, in any service on the Commission, to: set aside personal views and adherence to causes the applicant may have advocated; evaluate information objectively; and draw districting plans that comply with the Voting Rights Act and other requirements of the Voters FIRST Act. The regulation specifically addresses the following:

- (1) Personal interests, including personal financial interests.
- (2) Biases for or against any: individuals; racial, ethnic or other groups; or geographic areas.
- (3) Support for or opposition to any candidate, political party, or cause.

An applicant may demonstrate an ability to be impartial by describing that ability in his or her application or during the course of an interview, and by offering evidence of that ability that consists of both of the following:

- (1) The absence of any personal family, or financial relationships, commitments, or aspirations that a reasonable person would consider as likely to improperly influence one making a redistricting decision.
- (2) Occupational, academic, volunteer, or other life experiences that show an ability to set aside personal interests, political opinions, and group allegiances to achieve a broad objective.

Note that in response to public comments, this section has been amended in two very important ways. First, it emphasizes the paramount importance of the ability of applicants to set aside all other considerations and draw districting plans that comply fully with the Voting Rights Act (here, primarily the non-retrogression principle of Section 5 and the equal opportunity to participate in the mandate of Section 2), as well as state and federal constitutional requirements. Individuals who cannot set aside partiality, or personal or financial interests, to draw fair districting plans are excluded. Second, the amendments make clear that a record of participation and advocacy does not itself disqualify a person; rather, it is the

inability to subordinate such advocacy to the overarching requirements of the Voting Rights Act and other state and federal legal requirements that establishes a lack of impartiality.

§ 60801. Applicant

The Act does not define “applicant.” This section defines an “applicant” as a person who has submitted an application to serve on the Commission.

§ 60802. Application Materials

The Act does not define “application materials.” This section defines “application materials” as defined as 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.

§ 60803. Application Year

The Act requires the Auditor to initiate the application process by January 1, 2010 and to complete it by December 31, 2010, and decennially thereafter. This section defines “Application year” as the calendar year 2010 or any year ending in “0” thereafter.

§ 60804. Appointment to Federal or State Office

Section 8252 (a)(2)(A) bars persons from serving on both the Panel and the Commission where the applicant or a member of the applicant’s immediate family has, within the past 10 years, been appointed to or been a candidate for federal or state office. California Constitution, Article XXI, § 2(c)(1) declares that the process for selecting Commissioners “is designed to produce a Citizens Redistricting Commission that is independent from legislative influence.”

The regulation provides that the term “appointed” includes being appointed to a federal or state office by the Governor, any member of the Legislature (typically a member of the majority or minority leadership) or a member of the Board of Equalization, regardless of whether the appointment was confirmed. Appointments include persons who serve at the pleasure of the Governor, Legislature or the Board. Because such persons are or appear to be connected to the partisan politics of California, they would have a connection (distinguishable from most other Californians) to those persons (e.g., current officeholders) most interested in the redistricting plans to be drawn by the Commission. Accordingly, they may be, or appear to be, beholden to those who will be most affected by redistricting. The section avoids any broader interpretation of the term to include appointments by other authorities at the federal or state levels, as such appointments would have a relatively attenuated connection to the integrity of the redistricting process.

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

The Act amended the state constitution, article XXI, §3.3(d), to require that the Commission draw districts according to three mandatory criteria (compliance with the Voting Rights Act, the one-person, one-vote requirement, and geographical contiguity) and several secondary criteria that must be observed so long as they do not conflict with the Voting Rights Act or other mandatory criterion. The Act specified these secondary criteria: respect for city/county boundaries, and for neighborhood and communities of interest; geographical compactness; and ‘nesting’ of Assembly and Senate districts (Senate districts subdivided into two Assembly districts. Section 8252(d) establishes as a standard that applicants must have “an appreciation for California’s diverse demographics and geography” but the Act does not define those terms or prescribe how applicants may establish such an appreciation.

This section provides standards and guidance for the Applicant Review Panel. To have an appreciation for “California’s diverse demographics and geography,” a Commission member should understand that California’s population consists of individuals who share certain demographic characteristics that may reflect the preference of the residents concerning political representation, including race, ethnicity, gender, sexual orientation, and economic status. A Commission member also should have an understanding that the people of California reside in many different localities having distinct geographic characteristics that may reflect the preferences of the residents concerning their political representation, including areas that are urban, suburban, rural, industrial, agricultural, coastal, inland, arid, and temperate. Further, a Commission member should recognize that California benefits by having meaningful participation in the electoral process by registered voters reflecting all demographic characteristics and all geographic residential locations. In this context, as a result of public comments, this section reinforces the core requirement of adherence to the requirements of the Voting Rights Act by adding “recognition that California benefits by having meaningful effective participation in the electoral process by persons 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.”

This section further provides that an applicant may demonstrate this through a description of his or her appreciation for California’s diverse demographics and geography in his or her application or during the course of an interview, and through occupational, academic, and life experiences that show this appreciation. Those experiences may include, but are not limited to:

- (1) Working on one or more projects that involved Californians of different backgrounds or residing in different areas and therefore having differing interests, yet achieving a result that was acceptable to those different Californians.
- (2) Studying voting behavior of Californians in various areas of the state for the purpose of improving the electoral process.

- (3) Traveling throughout the state and meeting with people of different backgrounds to recruit them for employment or some other endeavor or to build consensus on some issue or idea.

Changes in this regulation in response to public comments tended to broaden the pool of eligible applicants.

§ 60806. Bona Fide Relationship

Section 8252 declares that a person can have a disqualifying conflict of interest based on a member of his or her immediate family engaging in any of the activities listed in subdivision (a)(2)(A) of that section or based on having an immediate family relationship with the officials listed in subdivision (a)(2)(B), specifically the Governor, a member of the Legislature, a member of Congress, or a member of the State Board of Equalization. Section 8252 contains a provision that defines the term “immediate family” as it is used throughout subdivision (a) as anyone with whom the person has a “bona fide relationship established through blood or legal relation,” including parents, children, siblings, and in-laws. Section 8252 is silent regarding the meaning of the term “bona fide relationship.” .

This regulation defines bona fide relationship as containing three key elements. First, the regulation adds spouse and registered domestic partner to the list of family members who constitute the members of a person’s immediate family, which by the express language of section 8252 already includes parents, children, siblings, and in-laws. The regulation does not cover more remote relatives.

Second, the regulation requires that for a relationship to be bona fide it must be an existing relationship, rather than one that has been terminated by death or dissolution.

Third, the regulation requires that, for a relationship to be bona fide, it has to have specific characteristics about it that demonstrate a prospective Panelist or Commissioner is particularly likely to be influenced by the interests of the other party. The characteristics cited are any of the following occurring 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.

§ 60807. Bureau

This section clarifies that the term “bureau” refers to the Bureau of State Audits.

§ 60808. Bureau’s Website

This section clarifies that the term “bureau’s website” means the official website for the Bureau of State Audits or any other website that the Auditor designates for use during the application process.

§ 60809. Campaign Committee

Section 8252(a)(2)(A) declares that a person has a conflict of interest that prevents the person from serving on the Panel or the Commission if the person or a member of the person’s immediate family has, within the 10 years immediately prior to applying to serving on the Panel or the Commission, served as an officer, employee, or paid consultant of the campaign committee of a candidate for federal or state elective office. The term “campaign committee” is somewhat ambiguous, in that a candidate for federal or state office may be associated with a number of different kinds of committees that differ in purpose and may differ in the degree of control that the candidate has over their operation.

This section limits disqualifying service on a campaign committee to those associated directly with the partisan political leadership of California, that is, those committees that are controlled by a candidate under either federal (for candidates for federal office) or California law (for any state candidate.) A controlled committee under California law includes any ballot measure committee controlled by a candidate. **The regulation does not apply to other committees.**

§ 60810. Candidate

This section defines a candidate for state or federal office as a candidate for state or federal *elective* office only.

§ 60811. Commissioner

This section clarifies that the term “Commissioner” refers to a member of the Citizens Redistricting Commission.

§ 60812. Conflict of Interest

Section 8252(a)(2) requires the removal of persons having a conflict of interest from the pool of applicants applying to serve on the Commission. The paragraph declares that a conflict of interest includes the activities and relationships that are listed in the provisions of subparagraphs (A) and (B) that follow. Paragraph (2) therefore leaves open the possibility that a person may have a conflict of interest on some basis other than what is listed in subparagraphs (A) and (B).

In the interest of providing greater certainty to prospective applicants for the Commission, bureau staff, and the public regarding what constitutes a conflict of interest that precludes service on the Commission (and service on the Panel, as the same conflict

of interest provisions are applied to applicants to serve on the Panel by § 8252(b)), this regulation provides that a conflict of interest is limited to those activities and relationships that are listed in section 8252(a)(2).

§ 60813. Consultant

Under § 8252(a)(2)(B), a person has a conflict of interest that prevents the person from serving on the Panel or the Commission if the person is a consultant to the Governor, a member of the Legislature, a member of Congress, or a member of the State Board of Equalization. In its use of the term “consultant” the subdivision is somewhat unclear in its application, as the term “consultant” has no generally accepted meaning. The subdivision is also unclear as to whether it applies to consultants for any member of Congress, or just to those members of Congress with a connection to California.

This regulation defines the term “consultant” to include any person who has entered into an agreement to provide consulting services, either directly as a party to the agreement, or indirectly through a business entity in which the person holds at least a 10 percent ownership interest. The regulation then defines “consulting services” as expert advice or personal services related to conducting campaign activities or holding congressional or state office, as opposed to providing consulting services that are non-political in nature. The regulation further provides that the subdivision only applies to consultants for members of Congress who are elected from California.

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

The Voters FIRST Act disqualifies persons from serving on the Commission who have contributed \$2,000 or more to any congressional, state, or local candidate for elective public office in any year.”

This section resolves a number of ambiguities in this requirement by referencing federal law on contributions for congressional candidates, and state law on contributions for local candidates. Consistent with comments from minority advocates, this provision does not include contributions made by candidates for local elective public office to support his or her own candidacy for that office. Similarly, to avoid the possible over-exclusion of applicants, this section also defines a congressional candidate for elective public office to mean a candidate for Congress elected from California; defines a state candidate for elective public office to mean a candidate for elective state office in California; and defines a local candidate for elective public office to mean a candidate for a regional, county, municipal, district, or judicial office in California. Finally, the section clarifies that “year” is a calendar year from January 1-December 31.

§ 60815. Diversity

The Act refers to “diversity” but does not define the term.

This section defines diversity as the variety in the racial, ethnic, geographic, economic, and gender characteristics of the population of California. This definition largely incorporates the list of characteristics included in § 8252(g), and adds the characteristic of economic diversity based on comments expressing concern that the membership of the Commission might be dominated by persons in professional occupations with higher levels of income, such that the Commission would not be representative of most Californians. Moreover, because the economic status of residents in a given area is a factor that may be considered during the redistricting process in determining a community of interest, economic diversity was added in the definition of diversity.

§ 60816. Federal Office

Under the Act, a person has a conflict of interest that bars service on the Panel or the Commission where a person or immediate family member has, within the past, been appointed to or been a candidate for federal office; moreover, a person has a disqualifying conflict of interest if during that same 10-year period the person or a member of his or her immediate family served as an officer, employee, or paid consultant of the campaign committee of a candidate for elective federal office. The term “federal office” is ambiguous as to whether the term includes all federal offices or just those that are connected to California politics.

To avoid overbreadth, the regulation narrowly defines the term “federal office” as only a congressional office elected from California.

§ 60817. In-law

The Act includes “in-laws” among members of a person’s “immediate family.” The term is ambiguous in its scope, in that it could be interpreted narrowly to only include the closest of in-laws, such as parents in-law and siblings in-law, or broadly to include cousins in-law, second cousins in-law, and so forth.

The regulation defines the term “in-law” as only including the father, mother, or sibling of a person’s spouse or registered domestic partner, and the spouse or registered domestic partner of a person’s child. The regulation treats marriage and registered domestic partnership as equivalent sources of in-law relationships, as Family Code, section 297.5 requires that registered domestic partners be treated the same as spouses under California law.

§ 60818. Legislative Leader

This clarifies that in these regulations “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.

§ 60819. Most Qualified Applicants

The Act requires the Panel to select 60 of the most qualified applicants “on the basis of relevant analytical skills, ability to be impartial, and appreciation for California’s diverse demographics and geography,” but also requires the elimination from consideration of any applicants who fail to satisfy the threshold eligibility requirements for serving on the Commission or who have a conflict of interest.

This regulation provides that to be recognized by the Panel as a most qualified applicant, an applicant must satisfy the constitutionally imposed eligibility requirements of not having a conflict of interest, and also possessing the qualifications for serving on the Panel to a degree that exceeds other applicants that the Panel judges not to be as qualified.

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

Section 8252(a)(2)(A) declares that a person has a conflict of interest that prevents the person from serving on the Panel or the Commission if the person or a member of the person’s immediate family has, within the 10 years immediately prior to applying to serve on the Panel or the Commission, served as paid congressional, legislative, or State Board of Equalization staff. This provision does not specify whether it includes service for any member of Congress or legislator elected anywhere in the country, or only includes service to members of Congress and legislators who are connected with California politics.

Consistent with other regulations aimed at keeping the conflict of interest provisions of the Act from being overbroad, particularly regulation §60812, this regulation interprets serving as “congressional staff” to include only those providing services to a member of Congress elected from California and interprets serving as “legislative staff” to include only those providing services to a member of the California Legislature.

Regarding the meaning of “paid staff”, this regulation defines the term in a manner that makes it synonymous with “paid employee” of the Congress, California Legislature, or State Board of Equalization. Such an interpretation gives Section 8252(a)(2)(A) a meaning that is distinct from §8252(a)(2)(B) of that section, which identifies a conflict of interest as arising from being a consultant to or under contract with a member of Congress, the Legislature, or the State Board of Equalization.

§ 60821. Paid Consultant

As noted in the discussion of regulation §60809, §8252(a)(2)(A) declares that a person has a disqualifying conflict of interest if the person or a member of the person’s immediate family has, within the 10 years immediately prior to applying to serve on the Panel or the Commission, served as a paid consultant of a political party or of the campaign committee of a candidate for elective federal or state office. As the term “paid consultant” may be subject to different interpretations, this regulation defines the term as

simply providing consulting services pursuant to a contract and in return for compensation.

§ 60822. Political Party

In making service as a paid consultant to a political party a disqualifying conflict of interest, as explained in the discussion of regulations §60809 and §60820, § 8252(a)(2)(A) leaves open a question as to whether serving as a paid consultant for a political party operating without geographical limit is sufficient to trigger a conflict of interest, or the political party in question must be one operating in California, for the consulting services to trigger a conflict of interest.

This section defines the term “political party” as a political party operating in California. To be considered operating in California, the party must be making expenditures to support candidates for elective public office in the state or otherwise recognized by the California Secretary of State as a qualified political party, but not to include collecting contributions for candidates in other states, which does not entail nearly as strong of a connection to California politics.

§ 60823. Political Party Central Committee

Consistent with other regulations, including regulation §60821, this section defines “political party central committee” in a manner that limits the scope of its reference to the state and county central committees of political parties operating in California.

§ 60824. Qualified Independent Auditor

The Act provides that the Applicant Review Panel will consist of “three qualified independent auditors.” Section 8251(b)(4) defines such persons as those licensed by the California Board of Accountancy and who have been independent auditors for at least 10 years prior to appointment to the Panel. The Act does not, however, define what qualifies an auditor as being “independent.” Although many state agencies employ auditors, auditors from other agencies would still remain under the control of those agencies and agency leadership appointed by partisan elected officials.

This regulation defines a “qualified independent auditor” as an auditor currently employed as a permanent employee of the Bureau of State Audits (the “bureau”), based on the bureau’s unique independence and the experience of its staff of auditors in nonpartisan assessments. The regulation does allow an auditor currently employed by the bureau to include experience as an auditor or investigative auditor acquired outside the bureau towards the Act’s 10-year experience requirement, as long as that experience was acquired under an agency that conducted audits of entities that were external to itself although under its oversight authority.

§ 60825. Randomly Draw

The Act requires two random drawings to occur. The first is for the State Auditor to select the members of the Panel. The second is for the selection of the first eight Commissioners. The Act is silent as to how the State Auditor should administer the random drawings.

This regulation provides clarity regarding that process by establishing a system of pre-numbered numbered balls and a bingo cage to perform the random drawings. The numbers on the balls would be assigned to the applicants in a subpool, so that each ball would bear a unique identifying number for each applicant. The balls would then be taken from their original wrapping, placed in a bingo cage, rotated vigorously and then the cage would drop the number of balls needed to fill the available positions on either the Panel or the Commission. The applicants with identifying numbers that correlate to the numbered balls selected would then be announced as either members of the Panel or the Commission. The random drawings would be open to the public.

§ 60826. Registered Federal, State, or Local Lobbyist

Under the Act, a person has a disqualifying conflict of interest if the person or a member of the person's immediate family has, within the 10 years immediately prior to applying to serve on the Panel or the Commission, been a registered federal, state, or local lobbyist. These terms are unclear as to whether the terms refer to federal, state and local lobbyists everywhere in the country, or just those connected with California. The regulation defines "registered federal, state, or local lobbyists" as lobbyists registered with the United States Senate, the United States House of Representatives, the California Secretary of State, or any political subdivision in California.

§ 60827. Relevant Analytical Skills

The Act requires that members of the Commission possess "relevant analytical skills" but does not specify those skills or describe how applicants can establish that they possess such skills.

This section identifies the relevant analytical skills as those a Commissioner may need to perform the redistricting work of the Commission, redrawing single-member district lines through a mapping process. Specifically, redistricting involves use of the census data and relevant software that the Act requires the Legislature to provide to the Commission. Using that data, the Commission members will need to apply the criteria described in the background section when working with staff to redraw district boundaries. The regulation therefore focuses on analytical skills that will enable Commission members to complete the work of redistricting. This section was amended following the comment period to specify clearly that the necessary analytical skills include the ability to understand and apply the governing legal standards, including the requirements of the Voting Rights Act.

In addition to having the skills necessary to participate effectively in the mapping process, a Commission member must have the skills necessary to work cooperatively

with other Commission members and the public. The Act requires Commission members: to make decisions in a manner that ensures full public participation; to solicit public input through an open hearing process; and to write a report; and.

The regulation groups these activities of the Commission into four key tasks, each of which requires specific analytical skills:

- (1) Gathering and comprehending information that bears upon redistricting;
- (2) Using the information the Commission has gathered to make sound decisions about district boundaries;
- (3) Applying the appropriate legal standards, including the Voting Rights Act requirements, to drawing district boundaries; and
- (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.

To gather and comprehend information that bears on redistricting, Commission members should be able to:

- (1) Read and understand applicable written materials, maps and statistical information.
- (2) Participate effectively in public hearings by listening carefully and critically to the testimony of witnesses and formulating concise questions that will elicit relevant information.

To use the information the Commission has gathered to make sound decisions about district boundaries, Commission members should possess the following skills:

- (1) Basic mathematical skills;
- (2) Familiarity with using computers and relevant software;
- (3) The ability to assess the credibility of information provided by staff, consultants and interested persons; distinguish between facts and assumptions or opinions; distinguish relevant facts from irrelevant facts; and assess the relative strength of competing arguments; and
- (4) The ability to resolve complex problems, particularly those involving factual ambiguities, as when relevant facts are not apparent or are disputed.

In applying the appropriate legal standards for drawing district boundaries, Commission members should be able to:

- (1) Understand the legal principles that govern redistricting as communicated through written materials and legal counsel's advice.
- (2) Appreciate the importance of applying proper legal standards to redistricting decisions.

In order to work effectively as a member of a group to make redistricting decisions that are factually and legally defensible and that the Commission can agree upon, Commission members should have the following abilities:

- (1) Effective communication skills including basic writing skills.
- (2) The ability to reason and interact effectively with other Commission members to build consensus on proposed decisions.

The regulation also provides that applicants can demonstrate that they have the relevant analytical skills through occupational, volunteer, academic, and life experiences that involved the use of those skills including, but not limited to:

- (1) Compiling information from many sources, including statistical reports, expert opinions, and comments by members of the public, in order to develop an understanding of an issue.
- (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.
- (3) Using expert advice, particularly legal advice, to make a decision.
- (4) Participating in group decision-making as a member of a group whose mission was to produce a report, plan, or other work product addressing an issue.

§ 60828. Staff

The Act separately refers to "paid staff" (§8252(a)(2)(B)) and "staff" (§8252 (a)(2)(B)) in declaring that a person has a conflict of interest if the person is serving as staff to the Governor, a member of the Legislature, a member of Congress, or a member of the State Board of Equalization. The regulation defines "staff" where there is no reference to pay as including persons employed 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, regardless of whether the employment includes compensation.

§60829. State Office

Just as the conflict of interest provisions of the Act include two references to the term “federal office”, each of those references is accompanied by a reference to “state office.” The use of the term “state office” in these two conflict of interest provisions carries the same ambiguity identified in other provisions of the Act as to whether the term includes all state offices anywhere in the country or just those that are connected to California politics.

The regulation defines the term “state office” so that it only means a California state office, and includes every office, agency, department, division, bureau, board, and Commission within the government of the State of California.

SUBCHAPTER 2

§ 60830. Selection of Panel Members and Alternate Panel Members

The Act is silent as to the process for randomly drawing Panel members and the applicants who will serve as the first eight members of the Commission, as well as the process for the selection of alternate members of the Panel and replacing Panel members.

This section provides additional specifics regarding random drawing as it relates to the selection of Panel members. Since the Panel must complete its review and selection of applicants by the statutory deadline, the regulation provides for selecting alternate Panel members concurrently with the selection of Panel members to minimize disruption of the Panel’s work if a new appointment is needed.

§ 60831. Information About Prospective and Selected Panel Members

The Act requires an open redistricting process that invites public participation.

This section provides the public information regarding the names, party affiliations, and relevant qualifications of the qualified independent auditors who will constitute the pool from which the members will be drawn and also of the Panel members once they are selected.

§ 60832. Training of Panel Members

This section was adopted following the comment period, and provides for training of Panel members to ensure that each has a full understanding of the redistricting process and the work of the Commission. The section provides for training on the requirements of the Voting Rights Act and other state and federal legal requirements for redistricting, the mechanics of drawing district lines using computer software, their duties as a Panel, and state open meeting requirements.

§ 60833. Duties of Panel Members

The Act provides only a limited amount of detail on the duties of the Panel. This regulation specifies that the Panel members act in compliance with state laws and regulations, and in a manner that is impartial and that reinforces public confidence in the integrity of the Panel's work. Following the comment period, the section was expanded to limit Panel member's discussion of material to the members and staff, and to limit discussion of applicants among Panel members to public hearings.

§ 60834. Removal of Panel Members

The Act is silent as to both the grounds and process for the removal of a Panel member. This regulation specifies the removal of a Panel member may occur by resignation or the Auditor may remove a member for failure or inability to adhere to the qualifications standards for selecting Panel members or failure to adhere to the duties of a Panel member.

§ 60835. Panel Administration

The Act is silent on staffing for the Panel and, although the Act provides that the bureau receive funding for implementation of the Act, the Panel is not provided with its own funding source. This regulation clarifies that the bureau will provide administrative and legal support to the Panel.

§ 60836. Panel Meetings

The Act does not provide any specific requirements for Panel meetings. The regulation provides guidance to applicants and the general public on the location and procedures that the Panel will follow during Panel meetings, and provides that all such meetings be conducted in public.

§ 60837. Panel Voting

The Act does not address voting procedures for the Panel. This regulation provides guidance to applicants and the general public on the voting procedures that the Panel will follow during Panel meetings. This regulation provides that any decision or reconsideration of a decision regarding the removal of an applicant from an applicant pool must be by a unanimous vote of the three Panel members. Other decisions of the Panel may be made by majority vote.

§§ 60838-60839 – reserved

SUBCHAPTER 3

§ 60840. Outreach Program

Section 8253(a)(6) requires the Legislature to appropriate sufficient funds to meet the estimated expenses of the bureau, the Commission and the Secretary of State in implementing the Act, including, but not limited to "adequate funding for a statewide outreach program to solicit broad public participation in the redistricting process." The

Act, however, does not set forth what constitutes “a statewide outreach program to solicit broad public participation.”

This regulation identifies elements of an outreach program, a substantial amount of which already has occurred. As part of its regulatory process, in early 2009, the bureau conducted public meetings throughout the state to invite comment, to alert the public to the application process and to encourage the submission of applications by a diverse pool of qualified applicants. The bureau to date has posted a substantial amount of material on its website, including a calendar indicating the key dates and deadlines for the application process, outreach materials regarding the role of the Commission, the eligibility and qualifications requirements for serving as a Commissioner, and the process for selecting Commissioners. The bureau has hired a public relations firm that is assisting the bureau with other elements of the outreach program including identifying community partners and requesting that they assist in recruiting qualified applicants, making presentations about the application process to diverse organizations throughout the state, creating and distributing public service announcements and print advertisements regarding the application process for placement in both regional and ethnic media, and widely publicizing both the availability of the application form and the deadline for its submission.

§ 60841. Overview of the Application Process

The Act requires an application and selection process but provides few specifics about how that process should work.

This regulation establishes a five-phase application process and provides an overview of the different phases of the application process. It also provides the public and the Panel with a general understanding of the application process.

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

The Act does not provide detailed guidance regarding the actual application process, but sets specific deadlines for completion of the various stages of the process. This regulation addresses those requirements that would apply to each phase of the application process.

Unless an applicant has a disability that prevents the applicant from completing an electronic application, the regulations require submission of electronic applications, although letters of recommendation need not be submitted electronically. All deadlines are final, and the bureau can remove from consideration applicants who submit more than one application at any phase of the application process. Additionally, the regulation requires the bureau to remove from consideration applicants who fail either to timely respond to inquiries or to provide additional information.

§ 60843. Phase I Initial Application.

The Act does not set forth a detailed application process. This regulation sets forth the specific requirements for Phase I of the application process. We propose an application process that includes an initial application designed to determine whether an applicant meets the minimum qualifications set forth in the California Constitution, Article XXI, §2(c)(2)-(3): an applicant must have voted in two of the last three statewide general elections and maintained the same party affiliation during the past five years. Also, this initial phase would determine whether an applicant has any conflicts of interest.

The Phase I application elicits from the applicant specific information that the bureau will use to verify that the applicant meets the minimum qualifications for service, and establishes an application period of a minimum of 60 days to facilitate applications from a large number of diverse and qualified applicants. Each applicant must certify that the information provided in the application is true and correct. The regulation also provides that materials submitted during the application process are public records and the bureau may post them on the bureau's website. To protect the integrity of the application process, the regulations permit the bureau and Panel to investigate and verify information provided by or about an applicant. Lastly, this regulation would permit the bureau to refrain from posting certain offensive or harassing materials on its website.

§ 60844. Phase I Initial Application Review.

The Act does not specify how the applications should be reviewed to determine whether an applicant meets the basic eligibility requirements; however, §8252(a)(2) requires the State Auditor to remove from the applicant pool individuals with a conflict of interest.

This regulation provides that during Phase I, the bureau will screen the applications for disqualifying conflicts of interest and determine whether the applicant meets the requirements of California Constitution, Article XXI, §2(c)(2)-(3). At the end of this phase, the regulation would require the bureau to invite applicants who are not excluded to participate in Phase II of the application process. The regulation also requires the bureau to notify applicants who are excluded from the applicant pool and advise them of the grounds for their exclusion.

§ 60845. Publication of Names in the Initial Application Phase.

Section 8252 (c) requires the State Auditor to publicize the names of those applicants remaining in the pool of applicants after the bureau screens applicants for ineligibility and conflicts of interest. The Act does not specify the means of publication. This regulation requires posting the names on the bureau's website so that the information is made simultaneously available to all interested persons across the state and encourages the prompt submission of public comments.

§ 60846. Written Public Comments and Responses.

The Act requires an open redistricting process that invites public participation, but does not specifically address how that public comment and participation will occur. The bureau anticipates that, by publicizing the names of the applicants under Regulation §60845, the bureau will receive valuable public comments identifying potential and actual conflicts of interest and providing other important information concerning applicants.

This regulation addresses comments at the end of Phase I concerning applicants under §60845. The public can submit written comments electronically, or via United States mail, or facsimile. The regulation establishes certain requirements for the written comments to encourage truthful and accurate comments and, to ensure that the process meets the statutory schedule, sets deadlines for submitting comments and responses to comments. The Panel will not consider untimely comments. In addition, the bureau will post on its website all written comments that are made pursuant to subdivision (b) of §60846.

§ 60847. Phase II Supplemental Application.

This regulation specifies the process and materials for submitting supplemental applications by applicants invited to participate in Phase II. This regulation identifies the elements of a detailed supplemental application seeking information related to an applicant's background and qualifications, as well as a short essay (500 words or fewer). Applicants must also submit three letters of recommendation. Applicants will have at least 30 days in which to complete the supplementary applications. Phase II also provides that each applicant is to be provided a 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. Additionally, while applicants must submit the supplemental application and all other supporting materials electronically, applicants may also submit their letters of recommendation either electronically or via the U.S. postal service, common carrier, or facsimile.

§ 60848. Phase II Supplemental Application Review.

This regulation establishes the method by which the Panel would review all Phase II applications. The Panel must deliberate (in public per §60835) session until the Panel agrees on a list of no more than 120 applicants (40 who are registered with the state's largest political party, 40 who are registered with state's second largest political party, and 40 applicants not registered with either party). Keeping in mind the size of the potential applicant pool, this regulation permits the Panel to request the State Auditor to assign staff to the members of the Panel to assist with their review of the application materials. This section specifically directs the Panel to evaluate the applicants based on their: relevant analytical skills, ability to be impartial, and appreciation for California's diverse demographics and geography. In addition, the Panel must consider whether the composition of the pool of applicants to participate in Phase III is reflective of the state's diversity. Finally, the bureau must post the names of those individuals selected to

participate in phase III on the bureau's website in order to facilitate further public participation and comment in the selection process.

§ 60849. Phase III: Interviews.

This regulation describes the interview process, including the scheduling of interviews and the payment of reasonable travel expenses incurred by applicants who must travel to participate in the interviews, and provides for advancing funds to those who reasonably need such assistance. The interviews are to take place in public and the Panel must record the interviews and the bureau is required to post the recordings on its website. To facilitate effective and timely interviews, the regulation would restrict the individuals who may ask interview questions to members of the Panel, Panel staff, and Panel legal counsel.

§ 60850. Phase III Applicant Review.

The Act requires the Review Panel to identify 60 of the most qualified applicants, 20 applicants who are registered with the state's largest political party, 20 applicants who are registered with the state's second largest political party, and 20 applicants who are not registered with either of the two largest political parties. These persons, under the regulations, will participate in Phase IV of the application process.

The regulation directs the Panel to remove any persons who do not meet the statutory qualifications for the Commission, and to evaluate the applicants based on their relevant analytical skills, ability to be impartial, and appreciation for California's diverse demographics and geography, and also whether the composition of the pool of applicants to participate in Phase IV is reflective of the state's diversity.

§ 60851. Reconsideration.

While the Act requires an application process, it does not address whether excluded applicants should receive reconsideration. This regulation specifies that an applicant may seek reconsideration of a bureau or Panel decision with respect to a conflict of interest, voter registration history, and failure to provide a timely and complete application. An applicant must appeal within 10 days of the notice of disqualification and establish by a preponderance of the evidence that he or she was erroneously removed from the applicant pool. It also establishes the Panel's ability to exercise its sole discretion to reconsider and correct a past Panel or bureau decision during the application process where gross error has occurred or compelling circumstances exist.

§ 60852. Phase IV Applicant Name Striking Process.

While the Act specifies that legislative leaders will have an opportunity to strike a limited number of names forwarded to the Legislature by the Panel, it does not describe how the Panel shall present those names to the Legislature. This regulation requires the Panel to

transmit the names of 60 of the most qualified applicants to legislative leadership via hand-carried letter, along with their applications and other materials.

Additionally, the Act does not address what the State Auditor should do if the list returned by legislative leadership does not contain at least 12 names from each sub-pool. This regulation would require the State Auditor to return the list to the legislative leadership for correction.

§ 60853. Random Drawing of First Eight Commissioners.

The Act does not set forth the method by which State Auditor must randomly draw the names of the first eight Commissioners, nor does it address what the State Auditor should do if the Legislature does not return a list of at least 36 names to the State Auditor by November 15 of the application year. This regulation, together with Regulation §60824, clarifies those ambiguities. The dates contained in this regulation are consistent with the dates established for transmitting the names to the legislative leadership and the random drawing of names contained in §§ 8252(e) and (f).

§ 60854. Transmission of Remaining Application Materials to Commission.

The Act requires the first eight Commissioners to select the final six Commissioners based on the diversity of the Commission and other information contained in the application materials. The Act does not specify that the bureau or Panel must provide copies of application materials to the Commission. This regulation provides a mechanism and deadline by which the Panel will transmit those materials to the first eight Commissioners.

§ 60855. Commission Vacancies.

Section 8252.5 requires that vacancies on the Commission be filled, within 30 days after a vacancy occurs, from the pool of applicants of the same voter registration category as that from which the vacating member was selected. If none of those remaining applicants is available for service, “the State Auditor shall fill the vacancy from a new pool created for the same voter registration category in accordance with Section 8252.” While the Act is specific in requiring the State Auditor to create a new pool, it does not specify whether the State Auditor must solicit new applicants. Moreover, it does not differentiate between vacancies that occur while the Panel is creating new district maps versus vacancies that occur years after the Panel has completed the redistricting process.

The regulation provides that the State Auditor fill vacancies only at the Commission’s written request. If the Commission has not yet certified the three final maps to the Secretary of State and is unable to fill a vacancy using the remaining pool of applicants, the regulation would require the Commission to notify the State Auditor in writing. As soon as practicable, the State Auditor would seek to fill the vacancy, convening a new Panel that would first reconsider the applicants whose names remained in the pool at the completion of Phase II. If the Panel cannot fill the vacancy using the applicants whose

names remained in the pool at the completion of Phase II, the Panel would next consider those applicants who remained in the pool at the completion of Phase I. This process would enable the State Auditor to fill the vacancy from the same voter subcategory and with applicants who were similarly situated to the remaining Commission members without expending significant state funds. The regulation would leave the decision to fill a vacancy after the Commission has completed its redistricting function to the discretion of the remaining Commission members.