

## **INITIAL STATEMENT OF REASONS PUBLIC COMMENT**

### **Introduction**

The Teachers' Retirement Board (board) adopted the 2019-22 California State Teachers' Retirement System (CalSTRS) Strategic Plan at its March 2019 meeting. The 2019-22 CalSTRS Strategic Plan reflects the board's priorities and goals and includes the objective of enhancing board meeting effectiveness and efficiency by, among other things, establishing a public comment framework.

Historically, the board and its committees have provided opportunities for public comment at the end of their discussions of each agenda item and a separate opportunity to comment on topics not on the agenda while accommodating speakers on a case-by-case basis. Members of the public are asked to voluntarily identify themselves and the subject on which they wish to speak by submitting a speaker request form, available in the back of the board room, to CalSTRS staff. The presiding chair of the meeting is provided the form by CalSTRS staff and recognizes the speaker at the designated time as a general practice. The board has also recognized any speaker stepping forward to speak at the end of the discussion of the agenda item, regardless of whether the speaker submitted a speaker request form. Each speaker is allocated three minutes

The purpose of Bagley-Keene Open Meeting Act (Bagley-Keene) is "that actions of state agencies be taken openly and that their deliberation be conducted openly" and that "conduct of the people's business and the proceedings of public agencies be conducted openly so that the public may remain informed." Bagley-Keene sets forth requirements for state bodies to generally make their meetings open so that members of the public may attend and participate.

Under Bagley-Keene, a state body, such as the board, is required to provide an opportunity for members of the public to directly address the state body on each agenda item before or during the state body's discussion or consideration of the item. While ensuring the broad public right to be heard at public meetings, Bagley-Keene implicitly recognizes the need for efficiency in the conduct of the people's business through limitations on public comment. Bagley-Keene authorizes a state body to adopt "reasonable regulations" to carry out the intent of the public comment. Specifically, subdivision (b) of Government Code Section 11125.7 allows a state body to adopt reasonable regulations, including a limitation on the total amount of time allocated for public comment on particular issues and for each individual speaker.

### **Problem Statement**

Recent experiences with public comment at board and committee meetings have raised new issues that have hindered the ability of the board and its committees to conduct their business. An increasing number of members of the public have been attending meetings for the opportunity to comment on agenda items or topics related to CalSTRS' activities. During public comment, multiple speakers have provided similar testimony on the same item or topic. Speakers have also requested that board members or staff read testimony or documents into the record of the meeting. This has resulted in an increase in the length of duration of the meetings. Speakers have also gone beyond providing public comment and have created disruptions during the meetings. These activities have resulted in fewer opportunities or less time for other members of the public to comment as is intended by subdivision (a) of Government Code Section 11125.7.

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Furthermore, some members of the public have requested, as part of their public comments, to present pre-recorded audio or visual content. This has raised concerns that CalSTRS may inadvertently infringe on the copyright of this material when it streams live video and audio of the proceedings of the board meetings, as is customary for nearly all board and committee meetings.

Lastly, and stemming from CalSTRS practice of webcasting and recording the board and some committee meetings at the discretion of the board, concerns about the privacy of minors have come to the board's attention. Webcasts and recordings of these meetings are provided by CalSTRS for greater transparency; however, the board wants to balance that against the privacy interests of minors whose images and private information will become publicly available.

### **Purpose, Necessity and Rationale**

#### Topics and Grouping

To keep public comments focused on topics germane to the business of the board and its committees, the proposed regulations specify that public comment is limited to agenda items or to subject matter within the jurisdiction of the board or committee. This is a reasonable restriction that promotes efficiency of the meetings because it allows discussion to remain focused on topics relevant to the business of the board and its committees for which they have the authority to act.

The proposed regulations also allow the presiding chair to group together members of the public who wish to provide public comment by topic or organization or by topic and organization. This allows for a greater number of speakers and promotes efficiency of the meetings by allowing comments on similar topics or comments being made by individuals from the same organization to be grouped together.

#### Time Allocation

The proposed regulations specify the allocation of time among public speakers who wish to address the board. Specifically, with respect to speaking time allocation, the proposed regulations:

- Limit each speaker to three minutes per agenda item and three minutes during the general comment period.
- Allow the presiding chair to set, limit or extend the amount of time allotted to any public comment period, if the presiding chair determines that it is necessary for orderly conduct of business or to maximize the opportunities to speak for individual members of the public.
- Specify that the presiding chair may allow a member of the public to transfer unused time for public comment to another member of the public but limits the total amount of speaking time per agenda item and the general comment period to nine minutes.

These practices are reasonable and have been adopted by other governmental bodies and upheld by California courts. Public comment frameworks promote efficiency of board and committee meetings so that business is not constrained by having to allocate time for public comment to a degree to which the duration of the proceedings would be significantly increased or the public's business is delayed or not completed.

#### Written Comments

The proposed regulations specify that comments, limited to items listed on the agenda or within the board's or committee's subject matter jurisdiction, may also be submitted in writing. Those comments are to be

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included as part of the meeting's administrative record. This promotes efficiency of the meeting by reducing the number of speakers during the course of the meeting, while providing a different method by which to provide public comments.

### Public Comment Request Form

The proposed regulations require members of the public who are present at the meeting and who desire to speak to the board to complete a public comment request form and submit it to a designated staff member. Members of the public are asked to provide the following information on the public comment request form:

- Name of the speaker.
- Indication of whether the speaker is 18 years of age or older.
- Agenda item number and topic which the speaker wishes to address.

Bagley-Keene prohibits a state body from requiring a person, as a condition to attending a meeting, to register his or her name, to provide other information, to complete a questionnaire, or otherwise fulfill any condition to attend its public meetings. The proposed regulations adhere to those limitations because they do not set conditions on attending board or committee meetings. Instead, the proposed regulations establish a reasonable method for staff members and the presiding chair to identify members of the public who are already present at the meeting who wish to address the board or committee and to provide for fairness in the order of speakers. The information allows staff members to organize comments by topic or organization and the presiding officer to know when the person should be called upon to provide public comment. Requiring members of the public who want to provide public comment to indicate whether they are 18 years of age or older allows CalSTRS to make efforts to maintain the privacy of those speakers who are minors and not broadcast their images on the internet.

### Webcasting and Recording

The proposed regulations state that the system's webcasting, audio and video recording of board and committee meetings by CalSTRS is within the sound discretion of the board and in compliance with the system's privacy policy. The proposed regulation clarifies that it is not limiting the public's continued right to record or broadcast the proceedings of board or committee meetings. These provisions only apply to the board's discretion to determine whether CalSTRS will webcast or record board or committee meetings. Webcasts and recordings of these meetings are provided by CalSTRS for greater transparency. This proposed regulation is a reasonable approach that indicates that the board may exercise its discretion to maintain the privacy of speakers who are minors and to avoid inadvertently infringing on copyrighted material when the proceedings of board and committee meetings are webcast or recordings are made available online.

### Interruptions and Disruptions

To ensure that the board and its committees are able to conduct orderly meetings, the proposed regulations specify that the presiding chair may:

- Stop a member of the public from providing further public comment or recess the meeting for:
  - Failing to comply with the requirements specified in these regulations.
  - Being unduly repetitious.

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- Engaging in any conduct that disrupts, disturbs or otherwise impedes the orderly conduct of the meeting.
- Order parties who willfully interrupt or disrupt a meeting to leave or be removed from the meeting after following a specified process that includes:
  - Notifying the disruptive party that they are in non-compliance with the meeting procedures.
  - Requesting that the disruptive party comply.
  - Informing the disruptive party of the consequences of non-compliance.

Specifying these processes makes meetings more efficient by laying out the circumstances under which a member of the public may be limited in delivering public comments to the board or committee. In addition, the processes ensure efficiency by creating a mechanism to address repetitious comments and disruptions, allowing meetings to be conducted within the time allotted in order to conduct the public's business. Such processes are also more conducive to allowing public engagement and participation. This promotes the intention of Bagley-Keene to provide an opportunity to all members of the public to speak and to not deny this opportunity because of the disruptive activities of others.

### Searching Items

The proposed regulations specify that CalSTRS has the right to inspect packages, backpacks, purses and other similar containers prior to being allowed entrance into the meeting room. This is a reasonable public safety measure to ensure that items that are prohibited in state buildings, such as firearms, are not taken into the meeting room by members of the public.

### Access to Meeting Room

The proposed regulations clarify that they are not meant to be interpreted as limiting public access to the meeting room under applicable fire and safety codes, regulations and policies. This makes clear that CalSTRS provides access to the meeting room for members of the public so long as such access does not put CalSTRS out of compliance with fire and safety restrictions meant for public safety.

### **Studies, Reports or Other Documents Relied Upon**

None.

### **Economic Impact Analysis**

CalSTRS has considered the impact of these regulations on business, with consideration of industries affected and information supplied by interested parties, including the ability of California businesses to compete with businesses in other states.

CalSTRS has determined that the regulations proposed do not constitute a major regulation because there are no direct economic impacts on California businesses. The proposed changes are clarifying in nature to improve board meeting effectiveness and efficiency, and to establish a public comment framework.

Specifically:

- The action will not affect the creation or elimination of jobs within the state.

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- The action will not affect the creation of new businesses or the elimination of existing businesses within the state.
- The action will not affect the expansion of businesses currently doing business within the state.
- The action will have no effect on the health and welfare of California residents and no effect on worker safety and the state's environment.

## Benefits Anticipated

The proposed public comment regulations are expected to enhance meeting effectiveness and efficiency by establishing a public comment framework to be followed by members of the public who wish to address the board and its committees, while still allowing the board and its committees to complete the public's business. Members of the public also benefit in knowing the framework under which they may provide public comment, increasing fair and equal access to as many members of the public who wish to participate, which in turn increases transparency and openness in conducting the public's business and furthers the intent of the public comment protections.

## **Evidence Supporting Finding of No Significant Statewide Adverse Economic Impact Directly Affecting Business**

These regulations do not place any additional licensing, record keeping or compliance requirements on businesses. These regulations solely affect members of the public who desire to provide comments to the board or its committees. Therefore, the proposed regulations will not have a significant statewide adverse economic impact on businesses.

## **Conferring with Interested Persons**

Pursuant to Government Code section 11346.45, CalSTRS has engaged with stakeholders that would be subject to the proposed regulations. At its September 2019 meeting, the board heard an informational item to review and propose potential changes to its current public comment framework. Present at the board meeting were individuals affiliated with the Association of California School Administrators, California Retired Teachers Association, California Teachers Association, Faculty Association of California Community Colleges and United Teachers Los Angeles. These organizations are regularly represented at board meetings. An individual affiliated with the California Retired Teachers Association and also an individual affiliated with the California Teachers Association provided public comments at the conclusion of the board's discussion on the agenda item.

At its November 2019 meeting, the board discussed an agenda item with draft regulations related to public comment. Present at the board meeting were individuals affiliated with the same organizations as at the September 2019 board meeting, plus the California Federation of Teachers. Two individuals affiliated with California Federation of Teachers and two individuals affiliated with the California Teachers Association provided public comments during the board's discussion of the agenda item.

CalSTRS staff has provided information to the Department of Finance regarding the proposed regulatory changes. The Department of Finance advised that they do not believe the proposed regulations have any fiscal or economic impact.

**Alternatives Considered**

These public comment regulations enhance board meeting effectiveness and efficiency by establishing a public comment framework. Bagley-Keene requires a state body to provide an opportunity for members of the public to directly address the state body on each agenda item before or during the state body's discussion or consideration of the item. Bagley-Keene also allows the state body to adopt reasonable limitations on public comment. The only alternative to the proposed public comment regulations is to not have any reasonable limitations and allow unfettered and limitless public comment. However, this alternative would perpetuate the deficiencies that exist with how public comments are administered at board meetings, rendering inefficiencies in how board meetings are conducted. Therefore, implementing the proposed regulations was deemed by the board to be the only viable alternative.

No alternative has been proposed that would be less burdensome and equally effective in achieving the purposes of the regulation in a manner that accomplishes the intent of the statute being implemented.