

## FORMAL ISSUE MEMO

Date: January 15, 2014

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### CalPERS Board of Administration Election: Process Changes to Voting Method

#### **Issue:**

CalPERS has historically had a low voter turnout (14%-15% participation) in its Board of Administration elections. Throughout the last few years, CalPERS has implemented several new practices to increase voter participation including advertising through social media, developing posters and signage with important events and dates, supporting a candidate forum which was webcast, staffing an on-site ballot box, as well as producing and posting videos of each candidate reading their Candidate Statement.

Unfortunately, even with these additional efforts, voter participation is still very low compared to other elections. In the 2013 Member-At-Large election, voter participation was only 11%, a decrease of approximately 4% from the last two Member-At-Large elections. Board election staff researched the California State Teachers Retirement System (CalSTRS) to gain information on their Board election processes. The research revealed that CalSTRS has a much more streamlined process allowing for greater member choice to cast a vote either by mail, online, or telephone. CalSTRS utilizes a Unique Identifier for each voter in order to vote in this manner, such as a "pin number". Additionally, the majority of the process is contracted out and the cost is still significantly lower than CalPERS. Staff anticipates that allowing additional voting methods could result in a higher voter turnout, as well as reduce cost and streamline the Board election process.

#### **Background:**

##### **CalPERS Process**

CalPERS Board election process requires a mail in ballot to be submitted by an eligible voter in order for their vote to be counted. The envelope must contain the voters signature certifying under penalty of perjury that the voter is eligible to vote in the election in order for the ballot to be counted in accordance with §554.5 of the Public Employees' Retirement Law. Currently, CalPERS uses two vendors (Safeguard Web and Graphics (SWAG) and Martin & Chapman) for the Board election process. SWAG is responsible for printing the Candidate Statement Booklets, coordinating the mass mailing of all Board election material, tracking returned ballots and preparing the ballots to be counted. Martin & Chapman is responsible for printing and counting the ballots. Due to the complexity of the Candidate Statement Booklet and the provisions in the Public Employees Retirement Law (PERL) that require CalPERS elections be certified by the Secretary of State, there are a limited number of vendors that CalPERS can utilize to fulfill its ballot counting requirements.

CalPERS Board Election staff manage all calls and fulfill all replacement ballot requests. The two election vendors, with oversight and approval of the Board Election staff, work together to conduct up to three mass mailings to distribute the ballot packages (containing the Candidate Statement Booklet and ballot), and, if necessary, the runoff ballot packages. Also, SWAG is responsible for the mass mailing of the Notice of Election. In order to accomplish these mass mailings, CalPERS is required to pay high postage costs to mail ballots, Notice of Elections, and Candidate Statement Booklets.

The Notice of Election is also shipped to CalPERS employers Agency Election Officers (AEO) if the agency assigns one. The Agency Election Officer (AEO) is CalPERS point of contact at each agency and is responsible for assisting with the election. When CalPERS distributes the Notice of Election, the AEO is responsible for circulating the information throughout their agency. This includes an employer report, which contains a list of employees in their agency who are eligible to vote as well as a Circular Letter announcing the election. The AEO's are responsible to provide notification to eligible active members by direct distribution of the Notice of Election or posting it in employee's work areas in accordance with § CCR 554.2 of the PERL. The AEO must sign a certification form acknowledging who will be responsible for distributing election material for the primary election and, if required, the runoff election. When the ballots are mailed to eligible members, any active member who does not have a valid mailing address will have their undeliverable ballot mailed to their AEO and they are responsible for distributing to the correct employee. The AEO is also responsible for completing a Certificate of Delivery, which certifies under penalty of perjury, that the undeliverable ballots have been delivered to the employees and that no campaign material was included with the ballots.

After the ballots are mailed to eligible members, SWAG leases an offsite location for the return ballots to be mailed and to conduct the ballot processing and counting activities. Also, they are required to provide an area for public viewing. The ballot processing and counting activities include SWAG hiring temporary staff to open the ballot envelopes and prepare the ballots to be counted. CalPERS Board election and Audit staff are also at the offsite location for five days processing on average 3,000 - 4,000 replacement ballots and providing oversight of the election activities.

After the ballots have been prepared to be counted, Martin & Chapman travels from Los Angeles to the offsite location in Sacramento, with their ballot counting machines, to count the ballots and provide the election results. Martin & Chapman is scheduled to count ballots on the last day of the ballot processing and counting week.

### CalSTRS Process

CalSTRS Board election process allows their eligible voters to vote by mail, online, or by telephone. They use only one vendor who is responsible for all printing and mailing of the Candidate Statements, election materials, processing replacement ballots, managing the election call center, and tabulating the votes. In addition, CalSTRS does not mail out election information to employers. CalSTRS staff does not participate in the ballot processing and counting activities. Public viewing is permitted, however the vendor is located in Texas. CalSTRS uses a plurality voting method, no runoff is required and the candidate with the most votes is declared the winner.

CalSTRS is able to conduct their board elections using an online and telephone voting method because their election results are not required to be certified by the Secretary of State. The CalSTRS Chief Executive Officer (CEO) is responsible for certifying the election results.

At this time, CalSTRS has held three elections since 2004. They have three elected seats, two Pre K – 12 and one Community College seat. They elect all three positions in the same election and the term is four years. Utilizing these various methods, CalSTRS saw a voter rate of 15.53% for the Community College election in 2011. However, in that same election only received 6.91% for the two Pre K-12 seats. CalPERS 2013 Member at Large election had an 11.5% voter rate. Allowing for multiple methods of voting, could increase our voter participation back to or higher than the participation rate for the CalPERS 2011 Member-At-Large Special election which was 15.6% and the 2009 Member-At-Large Election which was 15.7%.

After the 2013 Member-At-Large election, staff began to review the current election process in an effort to identify ways to improve the process and decrease costs.

### **Recommendations:**

Staff recommends the following changes to the election process:

#### **1. Implement Electronic and Telephone Voting**

The most beneficial option is to model the CalPERS Board election process after the CalSTRS Board election process to allow for electronic and telephone voting, in addition to mailing ballots. As mentioned above, in order to pursue this option it is necessary to make statutory changes related to Secretary of State certification from the Board election process.

#### **2. CEO Certification**

Currently, CalPERS is required to seek the Secretary of State's certification to finalize all Board election results. Due to current statutory structure, the Secretary of State will not certify an election using electronic or telephone voting. The Secretary of State requires an approved vendor to conduct the ballot counting of any election they certify.

It is recommended that the CalPERS CEO certify the Board election process. This will require an amendment to Government Code and the PERL removing the Secretary of State's certification requirement and adding language to include certification by the CalPERS CEO.

#### **3. Vendor Contract(s)**

The proposed changes to the election process will require either a new contract or amendments to the current CalPERS vendor contracts. Additionally, a new vendor may be necessary in order to manage the new process and handle all election counting and processing activities.

#### 4. Additional Process Changes and Cost Reductions

Currently, CalPERS employers are required to appoint an Agency Election Officer (AEO) in accordance with §554.1 of the PERL. Their role is to coordinate election activities, such as distributing election materials and ballot packages along with other duties explained above.

It was discovered, through conversations with employers, that many do not assign an AEO. This can cause issues if CalPERS needs to distribute election information in a timely matter, but do not have a contact on file. In addition, the ballots could potentially be at risk of fraud if an unethical employee completed and returned the ballots themselves instead of distributing to the employees.

It is recommended to discontinue the use of the AEO's. Election information will be distributed to employers through Employer Bulletins and other common communication methods. CalPERS would no longer mail election materials to employers and voters with undeliverable addresses on file. Eligible voters would be required to contact CalPERS or the vendor for a replacement ballot. Regulations would need to be updated to remove the AEO and their associated responsibilities. The cost savings to eliminate this process is \$90,000.00 for each election with the exception of the Retired Member election, which does not require an AEO.

#### **Not Recommended**

Keep the current Board election process that requires a certification from the Secretary of State, paper ballots to vote, multiple vendors and state staff to conduct, as well as the large expense of multiple difficult mailings.

Pro:

- No implementation steps are required

Cons:

- Likelihood that low voter turnout could continue
- Less options for voters to submit their vote
- High cost
- Must comply with the Secretary of State's confining election requirements
- Must depend on the AEO's to properly distribute election material

#### **Next Steps:**

After receiving Board approval, there are three major action items that need to be finalized in order to implement a new Board election process:

- Update Government Code – Develop proposed statutory changes in coordination with the CalPERS Governmental Affairs (GOVA) office, and submit one and a half years prior to the effective date to ensure that the new process is in compliance with the law and/or to develop language for amendment to the

PERL. In order for legislation to become effective on January 1, 2016, which will affect the 2017 Member-At-Large Election, GOVA must receive the appropriate information by the summer of 2014.

- Update Election Regulations – Once all Board election regulations have been updated to reflect the new Board election process, they must be reviewed by the CalPERS Legal Office (LEGO) for approval and then submitted to the Office of Administrative Law (OAL) for the rulemaking process. The rulemaking process typically takes eight months to complete, but could take longer depending on the public comments received and OAL. Once statutory changes have been made, the regulatory and rulemaking process would begin. Effective date would be January 1, 2016, which is an off-year for the CalPERS Board Elections.
- Revise Contract(s) – CalPERS will be required to revise the contract(s) with the current vendors or seek a new vendor who will be able to meet all the requirements defined in the new Board election process, such as mailing election materials, managing the election telephone line, and counting votes submitted electronically, by telephone, and/or mail. Staff will work with the Operations Support Services Division (OSSD) Contracts Unit to take the appropriate contracting steps.

#### **Strategic/Annual Plan Impact:**

Supports Goal B of the CalPERS 2012-17 Strategic Plan, which is to cultivate a high-performing, risk intelligent and innovative organization. The changes can improve the current process and deliver superior, end-to-end customer service that is adaptive to the voter's needs, while decreasing costs.

#### **Fiscal Impact:**

If the recommended course of action is implemented, the changes would greatly reduce the cost to run the CalPERS Board of Administration elections. CalSTRS averages \$.27 cents per eligible voter vs. CalPERS averages \$1.60 per eligible voter. CalSTRS estimated cost to run an election based on 430,000 eligible voters is \$117,500. The cost difference is so great due to the fact that CalPERS must utilize a special type of ballot and envelope to receive Secretary of State certification. If Secretary of State certification is not required, we could utilize a much simpler ballot and envelope.

In comparison, CalPERS Retired Member Board election has approximately the same membership size as CalSTRS membership with 456,000 eligible voters. The estimated cost for both CalPERS vendors for the primary Retired Member election is \$863,000, which could result in a net-cost savings of \$745,500. In the event of a runoff under the existing election process an estimated \$421,000 would be added to the total cost.

Additionally, if CalPERS removed the AEO requirements, there would be an additional \$90,000 savings for each election, with the exception of the Retired Election, as materials in that election are only mailed directly to the retirees.

### **Legal Impact:**

Any potential candidate related activity such as printed materials, access to CalPERS information and voting process changes will have to be evaluated by LEGO before implementation. Equal accessibility issues must be considered prior to implementation of these options.

A change to the election process would require amendments to the Government Code and the PERL through the legislative and rulemaking process.

### **Legislative Impact:**

Staff will need to propose legislation to amend Government Code Section 20096 to remove the Secretary of State's certification from the election process. Other sections of the Board election statutes and regulations may also need to be amended if a change to the election process is made.

### **Stakeholder Impact:**

Eligible Voters:

- Potential increased interest with more voting options in the elections, leading to higher voter return.

CalPERS Employers:

- Eliminates the need for an AEO.
- Employers will no longer be responsible for distributing election material and certifying that all ballots have been delivered.

CalPERS Board Election Office:

- A vendor would be responsible for the election phone line, replacement ballots, and all ballot processing and counting activities that is currently handled by CalPERS staff.
- Staff will have more available time for other election activities, such as outreach to increase voter turnout.

### **Critical Time Frames**

These implementation steps should begin immediately with a completion target date of January 1, 2016. Since 2016 is an off election year, staff will have adequate time to finalize the election planning and to incorporate new policies/procedures and to ensure the members, staff and vendor(s) are adequately prepared to begin the new process with the 2017 Member-At-Large election.