

# The CalPERS Board of Administration Election Process

Recently, comments have been raised about the current CalPERS Board of Administration (Board) election process. The process and three voting methods now used — paper ballot, online and phone — are legal and adhere to all applicable state laws and regulations. Here are some key facts.

## The CalPERS Board's authority over the election of Board members is set forth in California law.

The California Constitution and the Public Employees' Retirement Law (PERL) authorize and require the Board to develop and implement procedures for the election of its members. Neither the California Constitution nor the PERL require CalPERS elections procedures comply with California public elections law.

Government Code section 20096, provides as follows:

*"The board shall cause ballots to be distributed to each active and retired member of the system in advance of each election, and shall provide for the return of the voted ballots to the board without cost to the member, and shall develop election procedures."*

The California Constitution includes special protections for all public retirement boards that contain employee representation, limiting the extent to which the Legislature may alter their method of selection. Specifically, article XVI, section 17, subdivision (f), of the California Constitution was amended by Proposition 162 to provide in part as follows:

*"With regard to the retirement board of a public pension or retirement system which includes in its composition elected employee members, the number, terms, and method of selection or removal of members of the retirement board which were required by law or otherwise in effect on July 1, 1991, shall not be changed, amended, or modified by the Legislature unless the change, amendment, or modification enacted by the Legislature is ratified by a majority vote of the electors of the jurisdiction in which the participants of the system are or were, prior to retirement, employed."*

In 2003, the California Court of Appeal denied a challenge to the Board's authority to enact election regulations under section 20096 and article XVI, section 17, subdivision (f). The court confirmed that "[t]he Legislature chose an election under the Board's supervision and procedural regulation as the method of selecting employee members to the Board. This was the method of selection in effect as of July 1, 1991. Section 17(f) subjects the Legislature's power to change this method of selecting Board members to a vote by the electorate." (*California State Employees Ass'n v. California Pub. Employees' Ret. Sys. Bd. of Admin.* (2003) 113 Cal. App. 4th 137, 144.)

### The election and the election results are certified by the California Secretary of State.

Government Code section 20096 states: *"The results shall be certified by the Secretary of State."*  
On March 14, 2016, Steve J. Reyes, Chief Counsel for the California Secretary of State, approved the Certification of Election language continuing its certification of all CalPERS Board of Administration elections results.

### The Board approved the 2017 voting process.

On November 17, 2016, the Office of Administrative Law approved the changes in the Board's election procedures after they moved through the public regulatory process.

On February 14, 2017, the Finance and Administration Committee (FAC) approved the 2017 Member-at-Large Notice of Election instructing that paper, online, and telephone ballots be tabulated on October 2, 2017. The full Board approved the FAC's action on February 15, 2017.

### California law allows CalPERS to offer electronic voting.

Section 554.7 of the California Code of Regulations, provides:

*"CalPERS will allow online and telephone voting. Voters submitting an online or telephone vote are required to enter a pin number provided by CalPERS, and a unique identification number, and agree to electronically certify under penalty of perjury that the voter is eligible to vote in the election; otherwise the online or telephone vote shall not be valid."*

### We protect the privacy of the voter no matter which method is used.

CalPERS does not administer the voting process.

CalPERS has contracted with Integrity Voting Systems (IVS)/Everyone Counts to provide products and services for Board elections. IVS/Everyone Counts' clients include, among others, the State of Alabama, State of Colorado, and the State of New Jersey, State of Utah. It also has administered successful online pilot voting initiatives for the City of Los Angeles, as well as a pilot program for West Virginia that allowed military and overseas voters to cast their ballots online. The company has facilitated electronic voting programs in over 100 countries.

IVS/Everyone Counts' ballot facility has been certified by the California Secretary of State.

IVS/Everyone Counts uses proprietary software called eLect that utilizes a centralized voter list to ensure that each voter only casts the appropriate number of ballots. Once a member has successfully cast his or her ballot by mail, online, or by telephone, they are marked on the voters list as having participated in the election and are forbidden further access to the system.

The first ballot received is the only vote that counts for the voter.

If both a paper and digital (online/telephone) ballot have been submitted, the duplicate ballot is rejected based on the time stamp of the first ballot received.

All votes cast and ballots completed are transmitted directly to the IVS/Everyone Counts. IVS/Everyone Counts will not disclose any voter's vote nor will it reveal tabulation of the votes prior to the conclusion of the election.

All votes are kept in confidence by IVS/Everyone Counts to protect the secrecy of the vote.

CalPERS does not have access to individualized election information, preliminary tabulation numbers (if any), completed ballots, individual votes, or any other election information that might impact the integrity of the election. CalPERS does not, at any time, know which candidate a particular voter selected.

**IVS/Everyone Counts is required to provide specific information to CalPERS about the voting only after voting has closed.**

- Total eligible voters
- Total valid votes
- Total valid votes cast for each candidate
- Total invalid votes
- Total invalid late envelopes received after deadline
- Total miscellaneous invalid ballots
- Top 20 employers (Total votes received and top percentage of employees who voted)
- Voter breakdown by:
  - Age and which voting method used
  - Gender and which voting method used

**The barcode has been used for nearly 25 years.**

CalPERS Board elections began using a barcode system in 1994 in that year's Public Agency election. The bar code ensures that no more than one vote is cast per eligible voter.

Our contract with IVS/Everyone Counts states that all barcode and PIN numbers used must be generated randomly and must not reflect any personal data about any individual voter or information about CalPERS Identification Numbers.

**Placement of voter signature on ballot is in accordance with California law.**

California law authorizes and requires the Board to adopt regulations for the distribution of ballots and procedures of the election, among other things. (Government Code section 20096; California Constitution, article XVI, section 17(f).) The Board's lawfully adopted election regulations are set forth in Code of Regulations, title 2, section 554 et seq. Section 554.7 of the election regulations expressly provides that "the ballot shall be signed by the voter certifying under penalty of perjury that the voter is eligible to vote in the election; otherwise the paper ballot shall not be valid." Therefore, the placement of the voter signature line on the ballot is in accordance with existing law.

### California law details the proper handling of ballots, and digital information is protected at all times.

Section 554.7 of the California Code of Regulations, was revised in January 2017. It provides:

*"Paper marked ballots shall be returned to the location designated by CalPERS in the postage paid return envelope provided by CalPERS, or another comparable envelope, and the ballot shall be signed by the voter certifying under penalty of perjury that the voter is eligible to vote in the election; otherwise the paper ballot shall not be valid."*

Paper ballots are placed in a secured caged storage area that meets the requirements of the California Secretary of State for manufacturers of ballots. A representative of the California Secretary of State conducts a biannual inspection of the storage site for compliance with California security requirements.

Paper ballots that have been tabulated are boxed and sealed with permanent security tape and stored in a secured warehouse. All materials are shipped to California State Archives, where they will be stored for two years before being destroyed.

### Online / Telephone Security

IVS/Everyone Counts data center uses enterprise-grade hardware and encryption security procedures housed in highly secure and accredited data center facilities.

Data centers adhere to the National Institute of Standards and Technology's guidelines for encryption, threat modeling, physical server security, and tamper detection monitoring.

IVS/Everyone Counts technologies, procedures, and infrastructure have received accreditations from the United States Department of Defense.

### The public can view the ballot process at IVS/Everyone County's facility.

Public viewing is allowed Monday through Friday, 8:00 a.m. – 5:00 p.m. PST, from September 1, 2017, to October 2, 2017.

The facility is located at 7720 Hardeson Road, Suite A, Everett, WA 98203