



Finance and Administration Committee

Agenda Item 7e

April 21, 2020

Item Name: Proposed Board of Administration Election Regulatory Changes

Program: Board of Administration Election

Item Type: Action

Recommendation

Approve the proposed regulatory changes listed in Attachment 1. The regulatory changes are expected to take effect January 1, 2021 for the 2021 Member-at-Large election.

Executive Summary

The proposed regulatory changes would make technical amendments to clarify the existing board election procedures. In addition, the proposed regulatory changes would add four additional questions that candidates are encouraged to answer in their candidate statement. These proposed regulatory changes would require staff to initiate the rulemaking process with the Office of Administrative Law (OAL).

Strategic Plan

The Agenda Item supports the CalPERS 2017-22 Strategic Plan by reducing complexity in the election process to help strengthen the long-term stability of the pension fund.

Background

During the board election off-year, regulatory changes are submitted to improve the next board election cycle. The regulatory provisions subject to the proposed changes were identified during the 2017-2020 Board election cycle as ambiguous, vague or obsolete. The proposed regulatory changes are intended to clarify CalPERS existing procedures. In addition, the board election team was provided feedback requesting that the regulatory provisions be added to include an opportunity for candidates to voluntarily provide additional relevant information in their candidate statements including information regarding financial solvency, sexual harassment, conflicts of interest, and protection of confidentiality.

Analysis

Once approved, CalPERS will submit the proposed regulations to OAL to initiate the 45-day comment period. The public will have the opportunity to provide feedback, which will be presented to the board during the September Finance and Administration Committee meeting for final approval. Below is a description of the proposed regulatory changes:

Technical Amendments

The proposed regulation makes the following technical amendments to the California Code of Regulations (CCR), Title 2:

- Section 554.5, subsection (c) – Nomination of Candidates
 - Remove unnecessary comma in the first sentence. Replace “he or she” with “they”.
- Section 554.6 – Candidate Statements
 - Subsection (d) – Removed repetitive language. Added optional questions for candidates.
 - Subsection (f)(1) – Clarify that an arbitration request must be submitted no later than 5 working days after the candidate statements and addenda have been distributed.
 - Subsection (f)(3) – Clarify that the candidate requesting candidate statement arbitration will be considered as a participant and does not need to submit a notice of participation. Their initial request for arbitration is considered their notice to participate.
- Section 554.7, subsection (a) – Ballot Distribution
 - Delete obsolete provision permitting voters to submit a paper ballot in a “comparable” return envelope other than the return envelope provided in the ballot package. Under current procedures that place the barcode on the return envelope, there is not a comparable envelope unless the barcode is transferred to another envelope, which is not feasible. The barcode is required to track that a vote has been received from an eligible voter and that only one vote is cast per eligible voter.
 - Clarify that CalPERS shall not place any information that identifies the voter on the paper ballot, such as a barcode.
- Section 554.8 – Ballot Counting and Runoff Election
 - Subsection (a)(2) – Clarify that if the voter does not sign the return envelope, the ballot will be invalid.
 - Subsection (b) – Clarify that return envelopes will be scanned as received to ensure only one vote is cast per voter and will not be opened until after the voting period closes.

Optional Attestation

CCR, title 2, section 554.6, subsection (d) currently encourages candidates to respond to five questions when providing information in their candidate statement. The proposed regulations add four additional questions that would encourage candidates to provide voters with additional relevant information about themselves. The proposed questions are provided below:

- Within the past five (5) years, have you had any financial hardships, such as bankruptcy filings, insolvencies, assignments for the benefits of creditors, monetary judgements, liens and attachments, wage garnishments, notices of foreclosure, or similar hardships? If yes, please explain the nature of the hardship and how it was resolved.
- Have you ever been subject to any legal or employment action on the grounds of discrimination or sexual harassment? If yes, please explain the nature of the legal or employment action and how it was resolved.
- Do you have any conflicts of interest that could impact your role as a CalPERS Board Member? If yes, please explain the nature of the conflict(s) and how you would address it (them) if you are elected to the Board.
- Will you maintain the confidentiality of all confidential non-public information that you receive in your position on the CalPERS Board?

Budget and Fiscal Impacts

There are no budget or fiscal impacts. The proposed regulations clarify the existing board election procedures and add optional questions to encourage additional information in the candidate statements.

Benefits and Risks

Benefits

- The technical amendments will clarify the current procedures in the board election regulations.
- The optional questions encourage candidates to provide more relevant information to the voters.

Risks

- If unchanged, the regulations may cause confusion.
- Voters may receive less relevant information about candidates.

Attachments

Attachment 1 – Text of Proposed Regulatory Action

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