



Board of Administration

Agenda Item 4a

December 15, 2020

Item Name: Proposed Board of Administration Election Emergency Regulatory Changes

Program: Board of Administration Election

Item Type: Action

Recommendation

It is recommended the CalPERS Board take action to:

- a) Approve the Finding of Emergency as stated in Attachment 1 that requires emergency regulatory action to modify the “original signature” requirement in the nomination petition process during the existing pandemic in order to reduce candidate, signatory, and employee exposure to the virus that causes COVID-19 and therefore reduce COVID-19 exposure and transmission;
- b) Approve the proposed emergency regulations as stated in Attachment 2; and
- c) Approve the initiation of the emergency regulatory action and submission of the emergency regulation package with the Office of Administrative Law (OAL).

Executive Summary

On March 4, 2020, Governor Gavin Newsom proclaimed a State of Emergency to exist in California in response to the outbreak of respiratory illness due to the novel coronavirus, known as COVID-19. COVID-19 is a pandemic disease, found in every county in California, every state in the United States and nearly every country in the world.

At its November 2020 Board meeting, the CalPERS Board approved the recommendation of the Finance and Administration Committee (FAC) to pursue emergency regulatory action to temporarily modify the current “original signature” requirement in the nomination petition process to also permit “non-original signatures” for the purposes of establishing eligibility for nomination as a candidate for the 2021 Member-at-Large Board election.

The objective of the emergency regulatory action is to reduce the risk of COVID-19 exposure and transmission presented by gathering of original signatures during the existing pandemic which could expose candidates, signatories, and CalPERS’ employees to COVID-19 through either in-person contact or contact with non-organic surfaces (such as paper) that can host the virus for up to five (5) days.

Prior to pursuing emergency regulatory action, the CalPERS Board must first establish the Finding of Emergency to demonstrate that the emergency regulation is necessary to address an emergency that calls for immediate action to avoid serious harm to the public peace, health and safety, or general welfare. Attachment 1 to this agenda item contains the proposed Finding of Emergency for Board approval.

The CalPERS Board must also approve the proposed emergency regulations as presented in Attachment 2 of this agenda item. The proposed emergency regulations would modify the existing original signature requirement by also allowing non-original signatures on nomination petitions.

The CalPERS Board must also approve the initiation of the emergency regulatory action and the subsequent submission of the emergency regulation package to the OAL. Upon approval of the emergency regulation by the OAL and filing with the Secretary of State, the regulations will be effective for 180 days.

Strategic Plan

This 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

Current CalPERS Board election regulations provide that each candidate must obtain no less than “250 valid original signatures” during the nomination petition process to establish their candidacy for election. To mitigate potential risks of exposure and transmission of COVID-19 posed from original signature gathering activities during the nomination petition period for the 2021 Member-at-Large election, the proposed regulatory changes would also allow the submission of non-original signatures on nomination petitions. The objective of these regulatory changes is to reduce candidate, signatory, and CalPERS employee exposure to COVID-19 through either in-person contact or contact with non-organic surfaces (such as paper) that can host the virus for up to five (5) days.

There are two (2) current regulatory sections that provide for the original signature requirements - California Code of Regulations (CCR), Title 2, sections 554.3 and 554.5. The proposed amendment to the regulations will incorporate both sections and temporarily permit non-original signatures (as defined) by the language proposed in Attachment 2 to this agenda item and explained briefly in the Analysis section below.

After approval from the CalPERS Board, the board election team will issue the Notice of Emergency Rulemaking Action and after five (5) calendar days as required by Government Code (GC) section 11346.1(a)(2), will submit the emergency regulation package to the OAL which will initiate the five (5) calendar day public comment period and ten (10) calendar day OAL review period which occurs concurrently. At the conclusion of the ten (10) calendar day review period, the OAL will make a determination and, if approval is granted, the OAL will file the emergency regulations with the Secretary of State. Once filed with the Secretary of State, the emergency regulations will become effective for 180 days.

Analysis

Below is the description of the proposed regulatory changes pertaining to the CCR, Title 2:

- Section 554.3 – Notice of Election
 - No amendments are proposed to the language of Section 554.3. However, because the requirements of Subsection (b)(6) are incorporated by reference in the proposed amendments to Section 554.5, the full text of Section 554.3 is provided with the Agenda Item for reference as Attachment 3.
- Section 554.5 – Nomination of Candidates
 - Subsection (g) – Added this new subsection which specifies that where original signatures are required to establish the minimum number of petition signatures required for candidacy in Sections 554.3 and 554.5 of the CalPERS Board election regulations, CalPERS shall also accept non-original signatures to establish eligibility for nomination for the 2021 Member-at-Large election. A non-original signature is defined as an original signature on a nomination petition form that has been reproduced or scanned into an electronic format for electronic transmission.

The proposed regulatory changes would alleviate the risks posed from original signature gathering activities by reducing candidate, signatory, and CalPERS employee exposure to COVID-19 through either in-person contact or contact with non-organic surfaces (such as paper) that can host the virus for up to five (5) days.

Budget and Fiscal Impacts

There are no budget or fiscal impacts.

Benefits and Risks

Benefits

- The proposed regulatory changes would alleviate potential risks posed from original signature gathering activities during the existing pandemic.

Risks

- If unchanged, the regulations may increase potential risks posed from original signature gathering activities during the existing pandemic.

Attachments

Attachment 1 – Finding of Emergency

Attachment 2 – Text of Proposed Regulatory Action

Attachment 3 – California Code of Regulations (CCR), Title 2, section 554.3

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