

FINDING OF EMERGENCY

Government Code (GC) section 11346.1 requires a finding of emergency to include a written statement with the information required by paragraphs (2), (3), (4), (5) and (6) of subdivision (a) of section 11346.5 and a description of the specific facts demonstrating the existence of an emergency as defined by GC section 11342.545 and showing the need for immediate action.

On March 4, 2020, Governor Gavin Newsom declared an emergency in the state of California in response to the outbreak of respiratory illness due to the novel coronavirus known as COVID-19. On March 19, 2020, Governor Newsom issued Executive Order N-33-20, a stay-at-home order to protect Californians and slow the spread of COVID-19. The order mandates that all residents heed current public health directives, fundamentally ordering all but the most essential workers to stay home.

With Executive Order N-33-20, which remains in effect, much of CalPERS' impacted processes have been modified so that its operational functions continue with as minimal interruption as possible while also reducing the spread of COVID-19.

Part of CalPERS' operational functions include overseeing its board election processes. The CalPERS Board consists of 13 members; of these, six (6) are elected by their represented membership. Elections are held in a four-year cycle with the fourth year being an off-year when regulatory and program-related changes are implemented to improve the next election cycle. CalPERS is nearing the end of the 2020 off-year.

In 2021, CalPERS will conduct the first election of the next election cycle for the Member-at-Large election to select two (2) board members. Current board election regulations require, among other things, that candidates obtain and submit no less than 250 valid original signatures on the nomination petition(s) to establish their candidacies. Once the minimum number of original signatures has been obtained, the candidate is required to either deliver the nomination petition in-person or mail it to CalPERS Headquarters in Sacramento. Candidates have in the past engaged in in-person signature gathering activities, meaning the hard copy nomination petitions are routed to and handled by many Californians, potentially increasing COVID-19 exposure and transmission. By contrast, COVID-19 exposure and transmission would be lessened if candidates were also able to utilize non-original signatures to satisfy candidacy requirements by electronically receiving non-original signatures from signatories and electronically submitting nomination petitions with non-original signatures to CalPERS Headquarters as required.

Considering COVID-19's high person-to-person transmission rate and ability of the virus to live on a non-organic surface for five (5) days, hard copy transactions place candidates, signatories, and CalPERS team members at undue risk. Modifying existing regulations to allow nomination petitions with non-original signatures will ensure CalPERS is able to conduct the next election without unnecessarily exposing Californians to COVID-19.

Since the implementation of Executive Order N-33-20, other retirement systems have also modified their election processes specific to signature gathering requirements. Modifications have included extending the nomination petition period and completely suspending the signature requirement to reduce the spread of COVID-19.

During the September and November board meetings, CalPERS board members expressed concern regarding the risks imposed upon those involved during the upcoming election's nomination petition process by original signature gathering activities. Concerns were also expressed regarding candidates being unable to obtain the required number of original signatures while sheltering in place and working remotely, which limits potential candidates' abilities to host large gatherings without risking COVID-19 exposure.

With the number of COVID-19 cases continuing to increase in California, the stay-at-home order still in place, and the risks posed by person-to-person transactions that will occur during the nomination petition process, CalPERS finds the original signature requirement to be an emergency, as defined in GC section 11342.545, and proposes to immediately adopt emergency regulations to avoid serious harm to the health, safety, and general welfare of Californians.

Accordingly, the CalPERS Board finds that the adoption of this proposed emergency regulation is necessary to address an emergency pursuant to GC section 11346.1(b)(1). The Board finds that immediate action must be taken to avoid serious harm to the public peace, health, safety, or general welfare, for the reasons stated above.