



Board of Administration

Agenda Item 8c

November 15, 2023

Item Name: State Legislative Proposal: CalPERS Board Elections Voter List

Program: Legislation

Item Type: Action

Legislative Options

At the April 18, 2023, CalPERS Board of Administration (Board) meeting, the team was directed to prepare and present a legislative proposal to the Board that would allow CalPERS to release certain voter information to Board candidates during an election period. The following options are being provided for the Board's consideration and discussion purposes.

Option #1

Postpone decision until the 2025 legislative year. This allows CalPERS team members to fully craft and vet the necessary legislative and regulatory changes with stakeholders and legislative staff.

Option #2

Sponsor legislation in 2024 to grant CalPERS the authority to provide voter lists that, at the most, includes the member's name, city, employer (or employer at retirement for retired members), and the member's voting status for the current election. Parameters and processes for providing the voter lists would be determined by the Board through regulations.

Option #3

Opt not to pursue legislation. While this proposal may have merit, this type of legislative amendment may be best pursued by membership groups rather than CalPERS.

Executive Summary

Should certain CalPERS member data be released for the purposes of increasing voter turnout?

Average voter turnout over the last four election cycles for the elected members of the CalPERS Board ranged from a low of 9.40% in 2017-2020 to a high of 14.88% in 2013-2016. At the April 2023 Board meeting, CalPERS team members were directed to bring forward a legislative proposal that would permit limited access to CalPERS voter information for use during Board elections. Existing law does not permit CalPERS to share member voting history or contact

information except under specific circumstances. None of these circumstances are applicable to Board elections.

Strategic Plan

This proposal supports the Stakeholder Engagement strategic goal to promote collaboration, support, and transparency.

Background

CalPERS Board Elections

The CalPERS Board consists of 13 members, six of which are elected as follows:

- Two members elected by the members of the system,
- One member elected by and to represent active state members,
- One member elected by and to represent active local or public agency members,
- One member elected by and to represent active school members, and
- One retired member elected by and to represent the retired members of the system.

Elections are generally conducted on a four-year cycle, where elections for the six elected seats are held in the first three years of the cycle. The fourth year of the cycle is reserved for program updates and the selection of a contractor to administer the upcoming board elections. In every election, each eligible voter is mailed a ballot package that includes candidate statements, a paper ballot with a prepaid return envelope, and information on voting via mail-in ballot, telephone/IVR or online.

Over the years, CalPERS' program areas have partnered together to increase voter awareness of each election. Some of the outreach efforts made include:

- Candidate Statement Videos,
- Toolkit for Stakeholder Organizations,
- Press Releases,
- Social Media (Facebook, Twitter, LinkedIn, and Instagram) Messages, and
- Hosting a virtual candidate forum, streaming live, and placing it on the CalPERS website for future viewing.

Over the last four election cycles, the average voter participation has not resulted in the desired voter participation numbers; however, there has been a continual increase over the last three election cycles. Below is a summary of the election cycle averages from 2005 to present (see Attachment 1 for a full election summary).

Election Cycle	Average Eligible Voters Per Election	Average Voter Participation	Notes
2021-2022	765,898	13.27%	State and School member seats unopposed
2017-2020	917,398	11.48%	State and School member seats unopposed
2013-2016	589,291	9.40%	Retired and School member seats unopposed
2009-2012	1,069,429	14.88%	Retired, Public Agency, and School member seats unopposed
2005-2008	682,883	23.54%	School and Public Agency member seats unopposed

Stakeholder Interest in Voter Lists

During the 2021-22 board election cycle, the Operations Support Services Division (OSSD) averaged about one request per election seat for a list of eligible voters and contact information. Stakeholders requested voter lists for electioneering purposes, which may include, but is not limited to, the display of campaign posters or signs, distribution of campaign materials, or solicitation of votes for or against any running candidate or their position on policy matters. All requests were denied, and to the best of OSSD’s knowledge, this has been the case historically.

Existing CalPERS Member Privacy Protections

Government Code section 20230 provides that data filed with the Board by any member or beneficiary is confidential and no individual record shall be divulged by any team member having access to it to any person other than the member to whom the information relates to or their authorized representative, the contracting agency or school district they are employed, any state department or agency, or the university. The information shall be used by the Board for the sole purpose of carrying into effect the provisions of the Public Employees’ Retirement Law (PERL) and the Public Employees’ Medical and Hospital Care Act. Any information that is requested shall be treated as confidential and shall be used solely for retirement purposes, including, but not limited to, the administration and funding of retirement and health benefits and related reporting and notice obligations. Currently, CalPERS limits public requests for pension data to the retired member’s name, gross allowance, employer (or last employer if retired), and other related public information.

California Public Records Act

The California Public Records Act (CPRA) makes every document and writing of state and local agencies open to public inspection upon request by any person, unless the record is otherwise exempt from public disclosure. As it relates to potential voter list information, the CPRA deems the home addresses, home telephone numbers, personal cellular telephone numbers, and birthdates of all employees of a public agency not to be public records open to public inspection, except for an authorized representative. The CPRA also prohibits the disclosure of home addresses of “appointed or elected officials,” which are defined as, among others, a district attorney, public defender, member of a city council, member of a board of supervisors, appointee of the Governor, appointee of the Legislature, mayor, city attorney, police chief or

sheriff, public safety official, or state administrative law judge, many of which are CalPERS members.

Secretary of State Voter Registration Information File Request Process

When Californians register to vote, their verified voter registration information is stored and used by the California Secretary of State (SOS) and county elections officials. These agencies are responsible for the retention and maintenance of voter registration information. The Elections Code allows specified groups and individuals, such as any candidate for federal, state or local office, to request access to the following voter registration information:

- Voter registration data file,
- Voter participation history file, and
- Political district file.

Application fees for these files range from \$100 for a statewide request to \$30 for individual records, up to a maximum of \$100 for a single voter request.

An applicant requesting voter registration information shall only receive specific data for specific uses. The SOS has stringent state laws to secure and protect voter registration information for California voter registrants. These laws provide, among other things, that the applicant must meet specified requirements for data storage and security and sets forth reporting procedures for unauthorized use and data breaches. The SOS has 7-14 days to review and process a voter registration file request to ensure that the request meets the criteria set forth in law.

The Voter registration data file includes the following information:

- name,
- date of birth,
- registration date,
- residential and mailing address,
- precinct,
- contact information, and
- political party preference.

But excludes the following information:

- California Driver's License number,
- California identification card number,
- Last four digits of the Social Security Number,
- Unique identifiers, and
- The signature or digital signature of the voter registrant.

Voters may be excluded from the voter registration data file if they qualify as a confidential voter. Confidential voters are managed in the local county Election Management System and maintained in VoteCal – California's centralized voter registration database. To be identified as a confidential voter in VoteCal one must have a legal basis in one of the following three categories:

- Individuals that are issued a court-ordered confidential voter status upon showing good cause that a life-threatening circumstance exists to the individual voter or a member of the voter's household.

- Individuals who participate in the *Address Confidentiality for Victims of Domestic Violence, Sexual Assault, and Stalking Program* or the *Address Confidentiality for Reproductive Health Care Service Providers, Employees, Patients, and Other Individuals Who Face Threats of Violence Because of Work for a Public Entity Program*.
- Public Safety Officers, who are authorized by the county board of supervisors, and who can provide a signed statement under penalty of perjury that a life-threatening circumstance exists to the officer or a member of the officer's family.

Analysis

Since 2016, OSSD has been working with the Board on ways to increase voter turnout for CalPERS Board elections. Providing voter lists that include current voter participation history could assist Board candidates to target potential voters. It is possible this could increase voter turnout. Any potential benefit from releasing voter information should be weighed against the privacy concerns of CalPERS' members.

Upon commencement of an election, CalPERS sends a ballot package including candidate statements to eligible voters for each election. Candidates and individuals or groups on behalf of their campaigns communicate with eligible voters via mail, phone, or text messaging based on contact information they have obtained through their own means. Even though CalPERS does not share member information with candidates, these outreach efforts do result in eligible voters contacting CalPERS to express their concerns about the disclosure of their contact information.

Therefore, if the Board decides to pursue this legislative proposal, the Board should consider the following questions:

What information should be included in the CalPERS voter list?

The SOS voter registration data file includes, among other things, name, address, and contact information of registered voters so that a candidate can communicate with an eligible voter. The privacy protection laws within the PERL and CPRA have given CalPERS members and public employees an expectation that their home addresses and phone numbers and other personal contact information are confidential. Any change to the law that reduces that confidentiality protection, should consider these longstanding expectations. To try to strike the right balance between assisting board candidates to communicate with eligible voters as is permitted in the SOS laws and protecting CalPERS' members' privacy as established in the PERL and CPRA, the Board could consider limiting the CalPERS voter list to at most the member's name, city of residence, employer (last employer for retired members), and the member's voting status for the current election. Therefore, the information being released that is not currently public information is the member's city of residence and voter status. Also, consistent with the SOS voter registration information request process, CalPERS members should have the ability to opt out of the CalPERS voter list.

Who will be allowed to have access to the CalPERS voter list?

As stated above, the SOS voter registration information file can be requested by any candidate for federal, state or local office. The candidate is allowed to share the file with other individuals for election purposes in adherence to the Elections Code and SOS regulations. In addition, the SOS file can be requested by any person for election, scholarly, journalistic, or political purposes, and any person for governmental purposes, as determined by the SOS. For purposes

of the CalPERS voter list, the Board could consider only allowing a qualified candidate running for a seat in an active election to be eligible to request the voter list during the voting period of that election. The candidate could be allowed to share the list with other persons/vendors associated to their campaign based on rules adopted by the Board; however, all parties with access to the list should be bound either by confidentiality laws or a confidentiality agreement or both to ensure that the list is not distributed publicly. It is also suggested that the CalPERS voter list is only provided and updated at most on a weekly basis and CalPERS should charge the requesting candidate an amount commensurate with the cost to CalPERS to produce and distribute the list.

How will the CalPERS voter list be provided to the candidate and what security protections must be in place?

Currently, the SOS and the County of Sacramento utilize an application process to determine whether voter information can be released. Specifically, the SOS requires, among other things, requestors to meet minimum data storage and security standards, sets forth reporting procedures in the event of a data breach or unauthorized use, and assesses a fee for the information.

CalPERS currently has processes and procedures to transmit data to and receive data from business partners – including, but not limited to, provisions within contracts and agreements with contractors that, among other things, outline requirements on how the business partner is to protect, store, use, and expunge data.

CalPERS team members are currently analyzing potential options for candidates to access the CalPERS voter list. Two potential options are summarized here. One option is through an online portal, where the candidate uses a unique login provided by CalPERS. This requires that the candidate sign a confidentiality agreement, which regulates how the candidate uses the voter list. Another option is to use a secure server, which also requires CalPERS provide the candidate with a login.

What are the ramifications for misuse of the CalPERS voter list?

The Elections Code and SOS regulations describe the permissible and impermissible uses of their voter registration data file. As it relates to elections, some of the permissible uses of the file include:

- (1) Communicating with voters for or against any candidate in any election;
- (2) Surveying voters in connection with any specific election campaign or specific potential election campaign in which any voter registered to vote may vote; or
- (3) Soliciting contributions or services as part of any election campaign on behalf of any candidate for public office.

Some of the impermissible uses include:

- (1) Any communication for any personal, private, or commercial purposes;
- (2) Solicitation of contributions or services for any personal, private, or commercial purpose;
or
- (3) Using the voter registration information to harass any voter or the voter's household.

The Elections Code and SOS regulations also require any person who has lawfully received the voter registration file to report any unauthorized use or suspected breach of the information. When the SOS has concerns that the information that it has released has been misused – the

SOS will disclose its concerns and findings to the California Attorney General for further investigation and potential ramifications.

Consistent with the SOS and to protect against the potential for misuse of this historically confidential information, the Board could develop and adopt regulations that specify the permissible and impermissible uses of the CalPERS voter list, as well as an enforcement mechanism.

Public Pension System Election Practices

For comparison purposes, OSSD surveyed 20 public retirement systems, both inside and outside California, to determine how other retirement systems handle requests for board election voter information. Of these, 14 of the systems reported that they do not release member information for election purposes. Three of the systems release some information directly to the candidate. One system prints and mails materials on the behalf of stakeholder groups after reviewing and approving the materials – the costs related to this mailing are paid for by the requesting stakeholder group. One system only releases the information to the candidate's printing company. One system only releases name and years of service. (See Attachment 2 for survey results.)

Budget and Fiscal Impacts

This proposal will result in unknown one-time and ongoing administrative costs across several divisions within CalPERS and the external board election administrator.

Once CalPERS has finalized its process for candidates to request a voter list, it should consider charging a fee per request to recoup some of its administrative costs.

One-Time Costs

OSSD, the Legal Office, and the Information Technology Services Branch will experience one-time costs due to increased workload to develop the necessary voter list request processes and forms along with the corresponding regulations.

Ongoing Costs

OSSD, along with the board election administrator, will be responsible for fulfilling requests for the CalPERS voter list. The board election administrator is the owner of the voting history information and will be responsible for delivering the requested data file to OSSD who will be responsible for preparing the file for delivery to the candidate. The workload impact to OSSD and the board election administrator will depend on the number of candidates and how often the candidate requests the CalPERS voter list. Again, it is recommended that the CalPERS voter list is provided and updated at most on a weekly basis to reduce workload and cost.

Increased candidate outreach to voters is also likely to increase member calls to the CalPERS Call Center regarding the disclosure of their member information.

Benefits and Risks

Benefits:

- May benefit candidates running for a seat on the CalPERS Board by providing them voter information to assist in their campaign communications.
- May increase voter turnout in the CalPERS Board Elections.

Risks:

- The misuse or perceived misuse of voter information exposes CalPERS to litigation and reputational risk.
- Expanding access to CalPERS voter information for the purposes of the CalPERS Board Election may increase disputes on regular CalPERS Public Records Act requests.

Attachments

Attachment 1 – Full Election Summary. Election Cycle averages from 2005 to present.

Attachment 2 – Survey Results

Danny Brown, Chief
Legislative Affairs Division

Brad W. Pacheco
Deputy Executive Officer
Communications & Stakeholder Relations

Marcie Frost
Chief Executive Officer