

INITIAL STATEMENT OF REASONS

Proposed Amendment to California Code of Regulations (CCR) Title 2, sections 554.5, 554.6, 554.7, and 554.8 Board Election Regulations

DESCRIPTION OF THE PUBLIC PROBLEM

The California Public Employees' Retirement System (CalPERS) Board of Administration (Board) consists of 13 members; six of the members are elected by CalPERS members in a Board election. Elected members serve four-year terms and elections are conducted on a four-year cycle, with the fourth year being an off-year.

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

RATIONALE FOR THE DETERMINATION THAT EACH ADOPTION, AMENDMENT, OR REPEAL IS NECESSARY (PURPOSE, BENEFITS, AND GOALS)

Factual Basis/Rationale

Pursuant to Government Code (GC) section 20121, the Board has the authority to make rules as it deems proper, in this case, in relation to GC section 20096, Board Member Elections. The proposed regulations are necessary to clarify the current Board election procedures and provide voters with additional information about the candidates.

Specific Purpose and Necessity

The specific purpose and necessity of each of the proposed regulatory amendments are as follows:

CCR Title 2, section 554.5, subsection (c) – Nomination of Candidates

Existing regulation provides that voters signing a nomination petition for a potential candidate for the Board must meet the same eligibility requirements as the candidate. This regulatory amendment is necessary to clarify the subsection by removing an unnecessary comma in the first sentence. Also, this subsection was updated to gender neutral by replacing "he or she"

with “they.” There is no substantive change to this regulation. NOTE: CalPERS intends to amend remaining gender-specific references within the Board election regulations to reflect gender-neutral references at a later date through the Section 100 “Changes Without Regulatory Effect” process.

CCR Title 2, section 554.6, subsection (d) – Candidate Statements

Existing regulation provides that candidates may submit a candidate statement that will be included in the materials provided to voters and encourages candidates to provide information responsive to five questions enumerated in the regulation. This regulatory amendment is necessary to remove unnecessary and redundant language that restates the voluntary nature of responding to the enumerated questions.

Also, this regulatory action is necessary to add four questions to the current list of questions that candidates may voluntarily respond to in their candidate statements. These additional questions are intended to encourage candidates to provide voters with additional relevant information regarding financial solvency, sexual harassment, conflicts of interest, and protection of confidentiality.

CCR Title 2, section 554.6, subsection (f)(1) – Candidate Statements

Existing regulation provides that a candidate may submit a candidate statement and an addendum to that candidate statement and that the Election Coordinator must distribute the candidate statements and addenda to all candidates within a certain timeframe after submission. After distribution by the Election Coordinator, any candidate may request arbitration to dispute the substance of the candidate statement within 5 working days. This regulatory amendment is necessary to clarify that an arbitration request must be submitted within 5 working days after both the candidate statements and addenda have been distributed by the Election Coordinator.

CCR Title 2, section 554.6, subsection (f)(3) – Candidate Statements

Existing regulation provides that after a request for arbitration has been submitted, candidates wishing to participate in the arbitration must submit a request to participate to the Election Coordinator within a certain timeframe. This regulatory amendment is necessary to clarify that the candidate requesting the arbitration will be considered a participant in the arbitration and is not required to submit a separate notice of participation in order to participate. The candidate’s initial request for arbitration is considered their notice to participate.

CCR Title 2, Section 554.7, subsection (a) – Ballot Distribution

Existing regulation provides that the Board must provide voters with a ballot and a postage paid return envelope to submit the ballot by mail and that voters must use either the return envelope provided with the ballot or a comparable envelope. Existing regulations also require

that CalPERS ensure that only one vote is cast per eligible voter. The return envelope provided with the ballot contains a unique voter barcode that is used to track that a vote has been received from an eligible voter and that only one vote is cast per eligible voter. This regulatory action is necessary to clarify that information that identifies the voter, such as the unique voter barcode, will not be placed on the paper ballot.

Also, this regulatory amendment is necessary to delete the obsolete and ambiguous provision permitting voters to submit the ballot in a “comparable” return envelope other than the return envelope provided in the ballot package. The “comparable” return envelope provision is obsolete and ambiguous because due to the placement of the barcode on the return envelope included with the ballot, there is no comparable envelope that a voter could use to submit a ballot that could be tracked to ensure only one vote is cast per eligible voter.

CCR Title 2, Section 554.8, subsection (a)(2) – Ballot Counting and Runoff Election

Existing regulation provides that if the voter does not sign the ballot in accordance with CalPERS’ instructions, the ballot will be invalid. This regulatory amendment clarifies that the voter must sign the return envelope and not the ballot itself.

CCR Title 2, Section 554.8, subsection (b) – Ballot Counting and Runoff Election

Existing regulation provides that returned paper ballots will be opened and scanned to validate the ballot and ensure only one vote is cast per voter. This amendment is necessary to clarify that return envelopes will be scanned as received to ensure only one vote is cast per voter but will not be opened until after the voting period closes.

MATERIAL RELIED UPON/TECHNICAL, THEORETICAL, AND EMPIRICAL STUDIES, REPORTS, OR DOCUMENTS

Economic and Fiscal Impact Statement (STD. 399) was prepared and relied upon.

REASONABLE ALTERNATIVES TO THE REGULATION AND THE AGENCY’S REASON FOR REJECTING THOSE ALTERNATIVES

CalPERS has not identified any reasonable alternatives that would be as effective or less burdensome than the proposed regulatory amendments. Regulatory action was determined to be the most transparent means of clarifying the Board election procedures and encouraging candidates to provide voters with additional relevant information. CalPERS will consider any reasonable alternatives proposed through the public comment period associated with this regulatory action.

ECONOMIC IMPACT ASSESSMENT

The proposed regulatory amendments will be cost neutral to CalPERS.

In accordance with GC section 11346.3 (b), CalPERS has made the following assessments regarding the proposed regulation:

Creation or Elimination of Jobs Within the State of California

The proposed regulatory amendments clarify the current Board election procedures and add optional questions for Board election candidates to answer to provide voters with additional relevant information. CalPERS does not foresee that any jobs in California will be created or eliminated as a result of the proposed regulations.

Creation of New or Elimination of Existing Businesses Within the State of California

The proposed regulatory amendments clarify the current Board election procedures and add optional questions for Board election candidates to answer to provide voters with additional relevant information. CalPERS does not foresee that any new businesses in California will be created or existing businesses eliminated as a result of the proposed regulations.

Expansion of Businesses Within the State of California

The proposed regulatory amendments clarify the current Board election procedures and add optional questions for Board election candidates to answer to provide voters with additional relevant information. CalPERS does not foresee that any existing businesses in California will be expanded as a result of the proposed regulations.

Benefits of the Regulation to the Health and Welfare of California Residents

The proposed regulatory amendments are intended to modify the Board election procedures. The proposed regulatory amendments will not affect worker safety, or the State's environment. The proposed regulatory amendments will benefit the voters and candidates for the Board election.

CalPERS believes that the proposed regulatory changes will clarify current CalPERS Board election procedures. Also, adding optional questions for candidates to respond to regarding financial solvency, sexual harassment, conflicts of interest, and protection of confidentiality on the Board's candidate statement will help voters make informed decisions when they vote.

The proposed regulatory changes further the goals of the Board and indirectly benefit the health and welfare of California residents by clarifying the Board election procedures and encouraging candidates to provide voters with more information to help them make more informed decisions. CalPERS voting population cover over 1.5 million active and retired state, local government, and school employees.

Significant, Statewide Adverse Economic Impact Directly Affecting Business

The proposed regulatory amendments have no cost impact on either small businesses or on persons in the private sector and no significant, statewide adverse economic impacts that directly affect business.

EVIDENCE SUPPORTING FINDING OF NO SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESS

The proposed regulatory amendments will not have a significant statewide adverse economic impact directly affecting business, including the ability of businesses in California to compete with businesses in other states. The proposed regulatory amendments clarify the current CalPERS Board election procedures and encourage candidates to provide voters with more relevant information by adding four optional questions for candidates to respond to in their candidate statements.