



Board Agenda Item 36

DATE: June 22, 2021
TO: Board of Supervisors
SUBMITTED BY: Jean M Rousseau, County Administrative Officer
SUBJECT: Amended Election Procedures for Retirement Board of FCERA

RECOMMENDED ACTION(S):

- 1. Adopt and authorize Chairman to execute resolution adopting the amended election procedures for the Board of Retirement of the Fresno County Employees' Retirement Association (FCERA).**
- 2. Direct the Clerk of the Board of Supervisors to transmit a certified copy of the adopted resolution, in action item 1, above, to the Board of Retirement, the Retirement Administrator of FCERA, and the Fresno County Clerk/Registrar of Voters.**

The proposed amended election procedures ("Amended Procedures") for Board of Retirement elections in the recommended resolution reflect additional provisions or clarifications that would improve the administration of the election process for Board of Retirement elections.

The next regular Board of Retirement election is scheduled for Thursday, November 18, 2021. That election will be for the Active Member Election of Seat number 2 (FCERA general member).

In order for the recommended Amended Procedures to be effective for the next regular Board of Retirement election, your Board would need to adopt the recommended resolution, either in the form presented, or in such form with any additional procedures that your Board may wish to include, not later than its July 13, 2021 regular meeting.

The recommended Amended Procedures, if adopted by your Board, would require FCERA to request the Registrar to conduct a Board of Retirement election five days earlier (e.g., Friday, July 16, 2021) than the existing deadline for such request (e.g., Wednesday, July 21, 2021); this proposed change in days is needed to accommodate FCERA's desire for flexibility, incorporated into the Amended Procedures, so that if any of FCERA's election activities might fall on a weekend or holiday, they may be performed by the next FCERA business day. Although the Registrar does not yet have FCERA's proposed calendar of events for the 2021 Board of Retirement election, FCERA activities falling on such days typically should not compress the Registrar's election activities in odd-numbered year elections, but, typically would compress the Registrar's election activities for even-numbered year elections without moving up the process by the five days. This item is countywide.

ALTERNATIVE ACTION(S):

There are no identified alternative actions. However, your Board may continue this item to July 13, 2021 to consider any timely additional proposed elections procedures to be included in the recommended resolution. In the event of such continuance, under the recommended Amended Procedures, if adopted by your Board,

FCERA would have five less days than under the existing election procedures to request the Registrar to conduct the 2021 Board of Retirement election for the Active Member Election of Seat number 2 (FCERA general member).

If your Board does not adopt the recommended resolution (either in the form presented, or in such form with any additional procedures that your Board may wish to include) by July 13, 2021, the existing election procedures would continue in effect for Board of Retirement elections until they are amended by the Board of Supervisors for a future election of the Board of Retirement.

FISCAL IMPACT:

There is no anticipated additional net County cost associated with the recommended actions; however, the recommended Amended Procedures, if adopted by your Board, would improve the administration of Board of Retirement elections.

Under an existing agreement between the County and FCERA, FCERA will reimburse the Fresno County Clerk/Registrar of Voters (the "Registrar") for all Board of Retirement election-related costs within 45 calendar days of each Board of Retirement election.

DISCUSSION:

Generally, the County Employees Retirement Law of 1937 (CERL) governs the composition and length of membership on the Board of Retirement.

1. Board of Retirement composition; length of member terms.

Under Government Code § 31520.1, a statute within the CERL, the Board of Retirement consists of the following members according to the following designated seat numbers, which continue to be:

- The first member is the County Auditor-Controller/Treasurer-Tax Collector;
- The second and third members are general members of FCERA;
- The fourth, fifth, sixth, and ninth members are qualified electors of the County who are not connected with the County government in any capacity (except one may be a member of the Board of Supervisors) and are appointed by the Board of Supervisors;
 - The Board of Supervisors' appointment of one of its Supervisors is made pursuant to the Board of Supervisors' policies and procedures for the appointment of any of its members to serve on another public agency's governing board;
- The seventh member is a safety member of FCERA;
- The eighth member is a retired member of FCERA; and
- The alternate seventh member would be a safety member of FCERA where there are multiple safety member groups but that condition does not currently exist, so, that seat is vacant; even so, the election procedures shall apply to such an alternate seventh member if and when there should be such a member.

Government Code § 31520.5, a statute within the CERL, provides for the alternate retired member, who is a retired member of FCERA.

Generally, Government Code §§ 31520.1 and 31520.5, above, further provide, as applicable, that the length of term of each Board of Retirement member shall be three years, and such terms alternate (except for the

County Auditor-Controller/Treasurer-Tax Collector, whose term is continuous).

In addition, Government Code § 31524, another statute within the CERL, provides that the Board of Retirement's second and third members, seventh member, and, if any, alternate seventh member, shall be employees of the County or a Special District (*i.e.*, a governmental employer that participates in FCERA) while they hold such respective offices.

2. Eligible Voters.

The classes of eligible voters in Board of Retirement elections are the following:

- Active Member Elections:
 - General members (employees, deferred members, and inactive members);
 - Safety members (employees, deferred members, and inactive members); and
- Retired Member Elections:
 - Retired members.

The election procedures provide that a member of FCERA who is eligible to participate in a Board of Retirement election may vote only for one candidate who is designated within the same FCERA membership classification to which that eligible member of FCERA belongs as of the "Eligible Voter Certification Date" (*e.g.*, for an Active Member Election, the eligible member of FCERA may only participate in the appropriate voter classification either as an Eligible General Member or as an Eligible Safety Member, but not both).

"Eligible Voter Certification Date" is the date that a "FCERA Authorized Officer" delivers electronic data file(s) of eligible voters and a written certification of such data file(s) to the Fresno County Clerk/Registrar of Voters (the "Registrar").

"FCERA Authorized Officer" is any of the following: the FCERA Retirement Administrator; the Assistant FCERA Retirement Administrator; the FCERA Executive Assistant or the FCERA employee whom the FCERA Retirement Administrator certifies in writing to the Registrar as the functional equivalent of the FCERA Executive Assistant for purposes of these election procedures; or the FCERA officer who is designated by the FCERA Retirement Administrator as the clerk to the Board of Retirement.

Furthermore, the election procedures provide that this "one vote per eligible FCERA member" rule means that a FCERA member's accumulated retirement service credit in the other FCERA member classification (*e.g.*, Eligible Safety Member who has accumulated retirement service credit as a prior general member of FCERA), if any, shall not be considered in the determination of such FCERA members' eligibility to participate in a Board of Retirement election.

3. Election Procedures.

The CERL does not prescribe elections procedures for Board of Retirement elections. However, Government Code § 31520.1 permits the Board of Supervisors to determine the manner in which elected members shall be elected to the Board of Retirement.

The elections procedures for Board of Retirement Elections were last amended by the Board of Supervisors on June 18, 2019. Because those existing procedures are in place, unless and until they are amended by the Board of Supervisors, this item discusses the key recommended amendments to those existing procedures.

The elections procedures, including the recommended Amended Procedures in this item, govern the conduct of elections to the Board of Retirement in an objective and standardized manner. Such procedures enable the elections official to conduct orderly proceedings for the Board of Retirement elections.

Under the election procedures, and the recommended Amended Procedures, the Registrar serves as the election official for the Board of Retirement elections.

4. Summary of Key Recommended Amended Procedures.

The recommended Amended Procedures will provide additional provisions and clarity that will improve the administration of Board of Retirement elections (any references to "E-#", below, mean the election day minus # of calendar days).

Accordingly, the following key recommended Amended Procedures are summarized below (items correspond to Sections in the Amended Procedures; please refer to the recommended Amended Procedures for a complete statement of these provisions):

I. Dates of Elections; Officials; Reimbursement of Election Costs.

- A. Adds: The FCERA Retirement Administrator and the Registrar may jointly execute a memorandum, prior to the relevant Board of Retirement election, to reflect any correction to and/or completion of any incorrect or incomplete information in the Appendix A-Election Schedule.
- F. Adds/consolidated from other provisions: Allows the County or FCERA to perform an act by the next County or FCERA business day for any act, or the end of any period for them to act, that fall upon a Saturday, Sunday, holiday, or day for which County or FCERA offices, as applicable to such act or end of such period, are officially closed.

II. Types of Elections; Eligible FCERA Membership Classifications.

- B: Clarifies: the only persons eligible to participate in any Board of Retirement elections are members of FCERA who are identified and classified in their types of eligible voters; clarifies the reference to deferred members; and clarifies that "Eligible Retired Members" have the single classification of former employees of the County or a Special District who are Retired Members as of the Eligible Voter Certification Date.
- F. Clarifies (moved from Sec. II.C): A person's status as the spouse or domestic partner, a surviving or former spouse or domestic partner, or a beneficiary or beneficiaries (including, but not limited to, primary or contingent beneficiaries, or alternate payee(s)), of an Eligible Active Member or Eligible Retired Member, in either case whether living or deceased, does not make such spouse or domestic partner, surviving or former spouse or domestic partner, or beneficiary or beneficiaries) eligible to participate in any Board of Retirement elections, but, such persons may observe the election process, as a member of the public.
- G. Clarifies: Any FCERA member may observe the election process. Except for each candidate, including his or her single representative (but not both), who is a County employee, FCERA members who are County employees shall not be allowed any County Allowed Time (also known as "release time") for any activities referenced in these election procedures.

III. Request for Election.

- A. Changes: Not later than 125 calendar days prior to election day, the FCERA Authorized Officer shall make FCERA's written request for the Registrar to conduct the election (this would be earlier by five days, from the original 120 days, because, by giving FCERA its desired flexibility in I.F., above, the Registrar needs to preserve the time line for performing its task in the election process).

IV. Nomination Process.

Changes: Provides how FCERA is to give its written notice of the election:

For Active Member Elections, such notice shall be provided to: (a) each County department head,

each Special District, and each recognized employee representation organization having FCERA members employed by the County or a Special district, and, for each such notice to the County department head and Special District, shall (i) state that such notice is provided, and the request in (ii), herein, is made, under the election procedures, and (ii) specifically request that such notice shall be provided to all of the employees of such County department or Special District by its customary means for providing notices to such employees), and (b) each Deferred General Member, Deferred Safety Member, Inactive General Member, and Inactive Safety Member at his or her then-current mailing address on file with FCERA.

For Retired Member Elections, such notice shall be provided to each Retired Member at his or her then-current mailing address on file with FCERA.

- D. Clarifies the petition requirement from “Eligible General Members” to “General Members,” from “Eligible Safety Members” to “Safety Members,” and from “Eligible Retired Members” to “Retired Members;” only one nominee per member seat. (no change in the number of petitions per nominee-*i.e.*, 15).

Adds: The FCERA Retirement Administrator shall promptly forward to the Registrar a copy of each Nominee’s Submittal received from each nominee. The Registrar may use the email address in the Nominee’s Submittal for any written notices that the County Registrar provides to an affected nominee or candidate under the election procedures.

Adds: The Registrar is provided a procedure, at his or her convenience, for permitting an affected nominee to delete non-compliant statements from his or her Candidate’s Statement (*i.e.*, unchanged at 200 words or less); and a non-exhaustive list of word counting procedures.

- E. Change: The nomination period shall close 20 calendar days (now, E-55) after the date FCERA provides the Notice of Election to the Registrar (now, earlier by five days, to correspond to the new, earlier deadline for FCERA’s written request for the Registrar to conduct the election (See III.A, above).
- G. Change: Not later than E-52 (changed from “On E-52”), the FCERA Retirement Administrator shall determine the order of placement of duly nominated and eligible candidates’ names on the official ballot.

Change: The FCERA Retirement Administrator shall provide such candidates’ names, and order of placement of such candidates’ names on the official ballot, to the Registrar not later than the close of the FCERA business day on E-49 (now, earlier by four days, to be consistent with the new, earlier deadline for FCERA’s written request for the Registrar to conduct the election (See III.A, above).

V. Preparations for Elections.

- C. Changes: For the Active Member Election Certification: provides boxes to be checked for the type of electronic data file being provided.

Clarifies: For all elections, clarifies there are no identified voters in the accompanying electronic data file(s) who are not the eligible voters in such classification or type of election.

VII. Pre-Count; Counting; Election Results.

- B. Clarifies: The Registrar shall reject (currently, “not accept delivery”) any returned voted official ballots through any means other than those allowed under the election procedures.

Adds procedures relating to any Official Ballots Packets that have been mailed by the Registrar and returned as undeliverable by the US Postal Service (USPS) to the Registrar.

- G. Clarifies: The Registrar’s posting of the election results includes any changed election results.

- H. Adds: For any recount, the Registrar's apportionment of multiple deposits due to multiple timely requests for a recount of the election for the member seat.

Clarifies: For any recount, whether amounts deposited for the cost of recount may be refunded (generally, a refund is provided only if the requesting candidate achieves a new count, which is the highest number of votes of all votes cast for the election of a member seat, and which changes the result of the election in his or her favor, including achieving at least a plurality of votes, or achieving or breaking a tie vote).

- J: Clarifies: If there is no written protest of the election results filed with the Registrar within the allowed time under Section VIII.A, the Registrar shall, as soon thereafter as may be practicable under the circumstances at such time, certify the final, official election results of such election (Sec. VIII.A., below, relates to the requirements for protests of election results).

Clarifies: The time for the Registrar to complete all counting procedures and certification of the final, official election results is also extended by any additional time as may be necessary for the Registrar to act upon or respond to a protesting candidate relating to his or her protest under Section VIII.A.

VIII. Protest; Legal Challenge.

- A. Clarifies: The fifth calendar day deadline for a candidate to file a written protest with the Registrar commences when the Registrar has posted the election results (including changed election results) on its Department website, or in the event of a recount that has been completed, when the Registrar has provided written notice to the candidate that the recount did not change the result. Any recount that has been terminated shall be disregarded and shall not extend the time within which the candidate must file the written protest with the Registrar.

X. Retention of Tallied Returned Official Ballots and Undeliverable Returned Official Ballot Packets.

Clarifies: The time period for the Registrar to retain tallied returned official ballots, and Official Ballot Packets, as determined as undeliverable and returned by the USPS, is until the later of: (i) six months following the certified final, official election results, (ii) the final judgment, including any appeals, of any legal challenge brought pursuant to Section VIII.C. (writ of mandate), or (iii) any time as may be required by law in the event of any legal challenge brought other than pursuant to Section VIII.C., but, such reference to any other legal challenge is not intended to, nor may it be inferred, authorize any legal challenge under any basis not provided for in the election procedures.

Adds: updated Appendix A-Election Schedule, extending the election cycles through 2035, using the election schedule in the existing election procedures.

Your Board is being asked to adopt the recommended resolution that would adopt the recommended Amended Procedures, in recommended action 1, above, and to direct the Clerk of your Board to transmit certified copies of the adopted resolution as provided in recommended action 2, above.

If the recommended resolution is adopted by your Board, the recommended Amended Procedures in the resolution will be effective immediately upon such adoption and supersede the existing election procedures for Board of Retirement elections.

For details of the recommended Amended Procedures, Attachment A sets forth a redline version of the recommended resolution, showing all such proposed amendments to the existing election procedures.

5. Board of Retirement to receive Board of Supervisors' adopted resolution.

In prior years, starting when FCERA was administered separately from the County, FCERA requested the Board of Retirement to approve proposed amendments to the election procedures before the Board of

Supervisors considers adoption of such proposed amendments, and FCERA brought those proposed amendments to the Board of Supervisors. The Board of Retirement's approval is not required in order for the election procedures, including proposed amendments to the election procedures, to be effective.

For this year, FCERA recently informed County Staff that FCERA will not request the Board of Retirement to first approve any recommended amendments, and instead presented its requested amendments to the County; FCERA will forward any amendments adopted by your Board to the Board of Retirement for its subsequent receipt.

FCERA's submitted its requested amendments to the County, relating to the following: (a) clarifying the persons not made eligible to participate in Board of Retirement elections; (b) the date for the FCERA Retirement Administrator's placement of eligible candidate's names on the ballot; and (c) flexibility for FCERA election activities that fall on a weekend, holiday, or FCERA non-business day. The recommended Amended Procedures incorporate each of these requested amendments with some modification.

Because the recommended resolution largely includes County-initiated amendments, and FCERA's requested amendments are very few and relatively straightforward, County Staff are supportive of this approach for this recommended resolution in order that the recommended resolution can be considered by your Board for approval before the commencement of the election process for the 2021 Board of Retirement election.

On June 10, 2021, a copy of the recommended resolution, including the recommended Proposed Amendments, and this item have been provided by County Staff to the FCERA Retirement Administrator. By the next morning, FCERA's Retirement Administrator informed County staff that he reviewed the recommended resolution and that the FCERA Retirement Administrator concurs with the recommended Proposed Amendments.

6. Certified Employee Organizations Informed.

On June 9, 2021, the Human Resources Department provided all certified employee organizations with a copy of the foregoing summary of proposed key Amended Procedures, attachment A Redline and informed them that this item is being presented to your Board today.

ATTACHMENTS INCLUDED AND/OR ON FILE:

Attachment A, Amended Election Procedures Resolution (excluding Appendix A-Election Schedule and signature page) REDLINE

On file with Clerk - Amended Election Procedures Resolution, including Appendix A-Election Schedule

REFERENCE MATERIALS:

- BAI #7, June 18, 2019
- BAI #24, May 14, 2019
- BAI #25, December 8, 2015
- BAI #31, August 11, 2009
- BAI #24, September 11, 2007
- BAI #32, March 1, 2005
- BAI #19, October 30, 2001
- No Board Item Number, November 25, 1969

CAO ANALYST:

Raul Guerra