



Board Agenda Item 24

DATE: May 14, 2019

TO: Board of Supervisors

SUBMITTED BY: Donald Kendig, Retirement Administrator
Fresno County Employees Retirement Association

SUBJECT: Amended Election Procedures for Retirement Board of FCERA

RECOMMENDED ACTION(S):

- 1. Approve 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.**

ALTERNATIVE ACTION(S):

There are no identified alternative actions. However, your Board may continue this item to consider any timely proposed elections procedures to be included in the recommended resolution.

In order for the proposed amended election procedures to be effective for the next regular Board of Retirement election (scheduled for November 19, 2019), your Board would need to adopt the recommended resolution (either in the recommended form or in such form with any additional election procedures that your Board may wish to include) not later than July 9, 2019 (*i.e.*, last regular meeting of your Board before the date that FCERA needs to call the regular election for 2019 under the proposed amended election procedures, as discussed below). If your Board does not take such action within such time, the existing election procedures would continue in effect for Board of Retirement elections until they are amended by the Board of Supervisors.

FISCAL IMPACT:

There is no anticipated additional net County cost associated with the recommended actions; however, the recommended amended election procedures, if adopted, would promote efficiency and effectiveness in the conduct of the Board of Retirement elections.

Under an existing agreement between the County and FCERA, FCERA will reimburse the Fresno County Clerk/Registrar of Voters (Registrar) for all Board of Retirement election-related costs within 45 calendar days of each Board of Retirement election. The Registrar is undergoing a system upgrade and other California voter access initiatives that will have an effect on election costs, but they are not presently known in relation to Board of Retirement elections.

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:

- 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;
- The alternate seventh member would be a safety member where there are multiple safety member groups but that condition does not currently exist, so, that seat is vacant; even so, the recommended amended election procedures are drafted so that they shall apply to such an alternate seventh member if and when there should be such a member.

Government Code § 31520.1 further provides that the length of term of each Board of Retirement member shall be three years. Members' terms alternate as well.

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. 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 Board of Retirement elections procedures were last amended by the Board of Supervisors on December 8, 2015. Because those existing procedures are in place, unless and until they are amended, this item discusses the key proposed amendments to those existing procedures.

The elections procedures, including the proposed amended election 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 current and recommended amended elections procedures, the Fresno County Clerk/Registrar of

Voters (Registrar) serves as the elections official for the Board of Retirement elections.

3. Recommended Amended Election Procedures.

The recommended amended elections procedures provide additional detail and clarity for the following key procedures:

- Election scheduling process, which relates to regular elections and any called special elections;
- Provides procedures how the Registrar of Voters may declare that he or she cannot conduct, or complete the conducting of, an election (e.g., due to error, omission, or neglect, or any cause beyond control of FCERA, the County and/or any Special Districts) that in the determination of the Registrar of Voters may adversely affect the outcome of the election;
- Voter eligibility & membership classifications, discussed below;
- Nominating process;
- Balloting process & preparation for elections;
- Distribution & receipt of ballot packets;
- Pre-counting and counting of ballots, discussed below;
- Posting and delivering election results; and
- Protesting processes; and legal remedies for any legal challenge relating to, or seeking review of, FCERA's, the County's, and/or Special Districts' compliance with these elections procedures relating to any election of the Board of Retirement, discussed below.

Voter eligibility (same classifications as current classifications, but, further explanation provided in the recommended amended elections procedures):

- Active Member Elections
 - General Members (employees, and deferred & inactive members);
 - Safety Members (employees, and deferred & inactive members); and
- Retired Member Elections (retirees).
- "One vote per eligible FCERA member," as discussed below.
 - 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 Registrar of Voters.
 - "FCERA Authorized Officer" is any of the following: the Retirement Administrator; the Assistant Retirement Administrator; the FCERA Executive Assistant or the FCERA employee whom the Retirement Administrator certifies in writing to the County Registrar of Voters as the functional equivalent of the FCERA Executive Assistant for purposes of these election procedures; or the FCERA officer who is designated by the Retirement Administrator as the clerk to the Board of Retirement.

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.

Pre-counting and counting of official ballots (the additional detail in recommended amended elections procedures):

- Ballots (Voters) remain confidential.
- Write-in ballots may not be made.
- Pre-count of returned ballots is conducted before ballots are separated from their envelopes (envelopes cross checked with certified roster of names); then, envelopes to be opened solely for the purpose of determining if the ballots are in the like-kind envelopes; and then, ballots to be separated from envelopes. Any ballot not in its like-kind official envelope will not be counted.
- Registrar shall count returned ballots and tally results for Active Member and Retired Member elections.

Recount and related procedures (new provisions in recommended amended elections procedures):

- Requests for recounts must be delivered to Registrar no later than 5:00 PM on the 5th calendar day following the date the Registrar posted the elections results.
- One request per candidate. Candidate must pay for recount.
- Tie Votes: Procedures for drawing of lots to break the tie (*i.e.*, drawing slips of paper from a container).
- Protests/legal challenge: Must file timely protest (no later than 5:00 PM on the 5th calendar day following the date the Registrar posted the elections results). If there is a legal challenge relating to the County Parties (*e.g.*, Board of Supervisors or any officer, employee, or agent) the FCERA Parties (*e.g.*, Board of Retirement or any officer, employee, or agent) and/or Special District parties (*e.g.*, governing board or any officer, employee, or agent), it shall be a writ of mandate.

Employee Release Time:

- The amended election procedures clarify that each candidate, or his or her designated single representative who is a County employee, but not both, shall be allowed a reasonable amount of County release time for observing the elections process relating to: Retirement Administrator's drawing of lots for the order of placement of eligible candidates' names on the ballot; the Registrar's undertaking of the pre-count procedures, and the opening and inspection of return envelopes and the counting of returned voted ballots.

In addition, the proposed elections scheduling process is summarized below (key events; "E - #" is the number of days prior, and "E + #" is the number of days after, the election):

- E -120: FCERA provides to the Registrar a written request to conduct Board of Retirement elections with date of election, the seat(s) up for election, confirmation that FCERA will reimburse County, and estimate of number of official ballots to be ordered for printing.
- E -70: FCERA provides Notice of Election to County departments, Special Districts, labor organizations having FCERA members, and retirees.
- E -50: Close of Nominations.
- E -47: Retirement Administrator determines order of placement of eligible candidates on ballot.
- E -35: Sample ballot and proof of statements finalized by Registrar and FCERA.
- E -43: FCERA delivers to the Registrar (a) the electronic data file(s) of those members who are eligible to vote in the election (based on voter classification as of the delivery date known as the "Eligible Voter Certification Date"), and (b) certification by a FCERA Authorized Officer (defined above) relating to such electronic data file(s).
- E -24: Registrar mails sealed ballot packet to eligible members at their mailing address.
- Day of Election ("E"): Ballots to be returned in like-kind envelopes via mail, commercial courier, or

- in-person (*i.e.*, by the voter) delivery to Registrar by 5:00 PM on election day.
- E +1: Pre-Count -- Verification of those voting and creation of roster of FCERA members that voted. Verification of envelopes. Opening of envelopes; counting of Ballots.
- E +14: Posting and certification of election, except that the time is extended for any requested recount, and by five County business days for breaking any tie.

The election schedule through 2032, Appendix A to the amended recommended amended election procedures, is attached to this item.

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

If adopted by your Board, the recommended amended elections procedures will supersede the current election procedures for Board of Retirement elections.

For additional information summarizing the recommended amended elections procedures, Attachment A summarizes the comparison of the current key election procedures to the proposed recommended elections procedures. A computer-generated redline document, showing the changes between these two documents also is included with this item, but, because the changes are substantial and some text in the current elections procedures has been moved or consolidated for the recommended amended elections procedures, that document is provided only for the purpose of providing a complete item for your Board's consideration.

4. Board of Retirement support and participation in the process.

To demonstrate its support and participation in the development of the recommended amended elections procedures, the Board of Retirement held two readings (*i.e.*, March 20, 2019 and April 3, 2019), and on the second reading, approved these recommended amended election procedures.

The Board of Retirement provided the foregoing public meetings to FCERA members and members of the public concerning its approval of the recommended amended election procedures. The Board of Retirement's approval and support continues that spirit of collaboration with your Board, with the understanding that the procedures set by the Board of Supervisors are the Board of Supervisors' elections procedures.

This has been a collaborative process between the County Administrative Officer's Office, County Counsel, the Registrar of Voters, Counsel to the Board of Retirement, and FCERA staff with the goal of providing a clear and comprehensive set of procedures for conducting Board of Retirement elections in an orderly manner.

ATTACHMENTS INCLUDED AND/OR ON FILE:

On file with Clerk - Amended Election Procedures Resolution, including Appendix A
Amended Election Procedures Resolution - REDLINE
Attachment A - Summary Comparison of Current to Proposed Election Procedures
On file with Clerk - Current Election Procedures

REFERENCE MATERIALS:

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:

Deborah Paolinelli