

Kurato Shimada, Chair
Benefits & Program Administration
California Public Employees' Retirement System
400 P Street
Sacramento, CA 95814

March 1, 2006

Dear Mr. Shimada:

Please consider this a petition to the California Public Employees' Retirement System (CalPERS) under Government Code section 11340.6, requesting amendments to the election code. I hope the advance notice of the petition, which I provided via your assistant Lanette Hunt on February 15th, was helpful in allowing more time for review since the 30 day response time required by section 11340.7 is so short.

I request amendments to California Code of Regulations, Title 2, sections 554 and 554.6, in order to:

1. Avoid possible conflicts of interest by CalPERS staff in the performance of their duties in elections, and
2. Change the system of board elections to assure board members will be elected by the greatest possible majority of CALPERS members using a single ballot by implementing an "instant runoff" vote-counting procedure.

The CalPERS Board of Administration has authority to make these amendments under Government Code sections 20120 and 20121.

Presented below are the requested changes, followed by the rationale for the request.

§554. Election of Board Members.

Board member elections shall be conducted by the Election Coordinator designated by the Executive Officer in accordance with procedures adopted by the Board.

All CalPERS staff directly involved in conducting Board elections shall be required to sign a statement that they have fully complied with the CalPERS Board election procedures and have faithfully performed their assigned duties in the election. These statements shall be on file with the CalPERS Executive Office and shall be completed each time an election is held. No CalPERS staff ~~directly involved in conducting a CalPERS election~~

shall use his/her official position to favor one candidate over another. Nothing in this section shall prohibit CalPERS staff who are eligible to vote in an election from exercising the same personal rights as other eligible voters.

Rationale: It does not matter if CalPERS staff is “directly involved” in conducting CalPERS elections or not involved at all, California Code of Regulations, Title 2, §558. Incompatible Activities Statement, subdivision (1) prohibits CalPERS staff from “using the prestige or influence of the state or PERS for the officer's or employee's private gain or advantage or the private gain of another.” Using their official position to favor one candidate over another violates this provision, since staff would be influencing the elections of CalPERS to provide advantages to one candidate over another. Similar provisions are contained in section 19990, subdivision (a) of the Government Code.

CalPERS election regulations must be consistent with these and other legal provisions, as required by Government Code section 11349(d). Additionally, Government Code section 11342.2 states that “no regulation is valid or effective unless consistent and not in conflict with the statute and reasonable necessary to effectuate the purpose of the statute.” Allowing CalPERS staff who are not directly involved in the election to use their official position to favor one candidate over another is not reasonably necessary.

§554.6. Ballot Counting and Instant Runoff Election.

(a) Ballot Specifications and Directions to Voters

Ballots approved under this section shall be simple and easy to understand, and in elections involving more than two candidates for one board position shall allow a voter to rank candidates for that office in order of choice. Sample ballots illustrating voting procedures shall be included in the instruction packet with ballots.

Directions provided to voters shall conform substantially to the following specifications, although subject to modification based on ballot design and vote counting equipment:

“Vote for candidates by indicating your first-choice candidate, your second-choice candidate and so on. Indicate your first choice by marking the number “1” beside a candidate's name, your second choice by marking the number “2” by that candidate's name, your

third choice by marking the number “3,” and so on, for as many choices as you wish. You are free to rank only one candidate, but ranking additional candidates cannot help defeat your first-choice candidate. Do not mark the same number beside more than one candidate. Do not skip numbers.”

(b) Ballot Counting

Signed ballot envelopes shall not be opened until the deadline for final receipt of valid ballots. On the date specified in the Notice of Election at the location designated by CalPERS, the sealed signed envelopes containing the valid ballots shall be opened and canvassed publicly by an independent, neutral agent appointed by CalPERS for the purpose.

(1) In elections involving two or fewer candidates for the same board position, The the candidate having a majority of votes, or the winning lot as drawn by the Secretary of State in case of a tie vote, or the single candidate as provided in section 554.5(b), shall be certified by the Secretary of State as having been elected.

(2) In elections involving more than two candidates for the same board position the following procedures shall be used:

(A) The top marked choice on each ballot shall be counted initially by election officials.

(B) If any candidate receives a majority of the top choices, that candidate shall be certified by the Secretary of State as having been elected.

(C) If no candidate receives a majority of top choices, the agent shall conduct the instant runoff consisting of additional rounds of ballot counting.

(i) In every round of counting, subject to the rules of (iv) below, each ballot is counted as one vote for that ballot's highest ranked advancing candidate. “Advancing candidate” means a candidate for that office who has not been eliminated.

(ii) A candidate receiving a majority of valid votes in a round shall be certified by the Secretary of State as having been elected. If no candidate receives a majority of valid votes in a round, the candidate with the fewest votes shall be eliminated, and all ballots shall be recounted.

(iii) This process of eliminating the candidate with the fewest votes and recounting all ballots shall continue until one candidate receives a majority of the valid votes in a round.

(iv) If a ballot counting towards some candidate has no more available choices on it, that ballot shall be declared "exhausted" and shall not be counted in that round or any subsequent round. Ballots skipping numbers or eliminated candidate shall be counted for that voter's next clearly indicated choice. Ballots with two or more of the same number shall be not be counted in that round unless only one of the candidates with the duplicate ranking is an advancing candidate.

(b) (c) Where the Board members elected under Government Code section 20090, subdivision (g)(1) are elected in the same election, the two positions shall be separately designated Position A and Position B. The position held by Charles Valdes on November 15, 2000 shall thereafter be designated Position A. The position held by William B. Rosenberg on November 15, 2000 shall thereafter be designated Position B.

~~The candidate receiving the majority vote for each position, either outright or after instant runoff rounds, shall be certified by the Secretary of State as having been elected. In the event that no candidate for any position receives a majority of votes (i.e., 50% of votes cast plus one vote), a runoff election will be conducted involving the two candidates who received the highest number of votes.~~

~~The amendments to this section adopted on March 21, 2001 shall become operative on January 16, 2002. The amendments to this section filed December 1, 1995 shall remain in effect until that time.~~

Rationale: In 1993, 96 candidates ran for two Board positions. One of the winning candidates received less 5.5% of the vote. We certainly can't say this was the candidate most voters wanted. CalPERS corrected that situation a few years ago by requiring a runoff to ensure all board members are elected by a majority vote. However, as CalPERS recently experienced, such runoff elections are expensive, costing about \$1 million. I believe, and I hope the Board agrees, this is not the best use of our retirement funds.

The proposed amendments would institute instant runoff voting (IRV), which eliminates the "spoiler" impact of long-shot candidacies and avoids expense of runoff elections. IRV is equivalent to a series of runoff elections

conducted by allowing voters to rank the candidates in order of preference, 1, 2, 3, and so on. The candidate who receives the fewest number of first choices from the voters would be eliminated in the first count round and all the ballots counting towards that candidate would be redistributed to the voters' second choice. Each successive count round eliminates the next lowest polling candidate, transferring those ballots, until one candidate achieves a majority.

Endorsers of instant runoff voting in civil elections include: USA Today, Sacramento Bee, and the San Jose Mercury News. Instant runoff voting has been implemented in San Francisco and other jurisdictions. In San Francisco, a recent study by FairVote pointed to a near tripling of voter turnout under the new, highly preferred election system, over projections based on the previous runoff system. For more information see The Center for Voting and Democracy at <http://www.fairvote.org>.

CalPERS has long been a leader in corporate governance, endorsing proxy access for shareholder director nominees, majority voting for directors, and even sponsoring SB 1207 ([Alarcón](#)) to make majority voting for directors the default for California corporations.

However, what if the CalPERS Board of Administration is successful, not only in requiring a majority vote default but also in obtaining shareholder access to the corporate proxy for director nominees? If suddenly there were dozens of contested elections each year, several may involve multiple candidates for the same position. Would the Board of Administration really want corporations to also go through the additional expense of a second proxy vote to decide run-offs?

CalPERS should set the standard with its own elections to the Board of Administration. Yes, ensure candidates are chosen by a consensus majority, but do it in the most economical way possible.

Thank you for your consideration. Please contact me at (916) 869-2402 with any questions you may have concerning this petition.

Sincerely,

James McRitchie

James McRitchie, 2995 Yorkship Court, Elk Grove, CA 95758