



Executive Office
P.O. Box 942701
Sacramento, CA 94229-2701
Telecommunications Device for the Deaf - (916) 326-3829
(916) 658-1249, FAX (916) 326-3410

June 23, 2006

Mr. James McRitchie
2995 Yorkship Court
Elk Grove, California 95758

Dear Mr. McRitchie:

**Subject: Request for Reconsideration and Draft Petition of Purported
Underground Regulations**

Thank you for your letter of May 26, 2006 in which you requested that we reconsider our denial of your March 1, 2006 petition to amend California Code of Regulations, title 2, sections 554 and 554.6. You enclosed your petition for reconsideration which sets forth the reasons why you are asking CalPERS to reconsider its denial of your petition. In your letter you stated you had "broadened [your] previous petition" to raise issues not included in your petition submitted on March 1, and requested that CalPERS address your allegations of purported underground regulations in its response to your request for reconsideration. You also enclosed a draft petition alleging "underground regulations" which you stated you would be forced to file with the Office of Administrative Law if CalPERS denies your request for reconsideration.

Government Code section 11340.7, subdivision (c) provides, "Any interested person may request a reconsideration of any part or all of a decision of any agency on any petition submitted." Your allegations regarding purported underground regulations were not included in your March 1 petition, and we will not include a response to them in this decision. The petition for reconsideration which you submitted is limited to reasons why you are asking CalPERS to amend sections 554 and 554.6, and our response is limited to those items.

After careful reconsideration, CalPERS affirms its denial of the petition to amend sections 554 and 554.6 for the reasons set forth in the attached decision. In accordance with Government Code section 11340.7, subdivision (d), the decision will be transmitted to the Office of Administrative Law for publication in the California Regulatory Notice Register at the earliest practicable date. Please see the enclosed Form 400 and Notice.

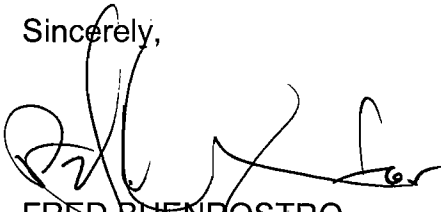
As stated in our decision, at its May 2006 meeting the Benefits and Program Administration Committee (BPAC) considered numerous items regarding the process of elections to membership of the CalPERS Board of Administration, including amending sections 554 and 554.6. BPAC took no action at that meeting to recommend that the

Board change the sections, instead directing the Chair of BPAC to work with the President of the Board to form an ad hoc committee and bring back recommendations to BPAC at a later time.

Furthermore, as stated in our decision, the proposed amendment to section 554 is not only unnecessary but may be in violation of state conflict of interest codes. Finally, while the Board has not moved to adopt an "instant runoff voting" system at this time, it continues to explore ways to increase voter participation and to streamline the elections process. The ad hoc committee may also address matters you included in your draft petition to OAL regarding purported underground regulations.

Thank you again for your interest in CalPERS. If you have any further questions, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read 'Fred Buenrostro', written over a horizontal line.

FRED BUENROSTRO
Chief Executive Officer

Enclosures

cc: Office of Administrative Law

**Board of Administration
California Public Employees' Retirement System**

**Decision on Request for Reconsideration of Denial of Petition
California Government Code Section 11340.7**

INTRODUCTION

On March 1, 2006, Mr. James McRitchie filed, under Government Code section 11340.6, a petition to the Board of Administration of the California Public Employees' Retirement System (CalPERS). The petition requested that CalPERS amend California Code of Regulations, title 2, sections 554 and 554.6. On March 29, 2006, CalPERS denied Mr. McRitchie's petition, as published in the April 14, 2006 California Regulatory Notice Register, pages 474-475. If adopted, the proposed amendments would make these changes:

1. Section 554¹ currently prohibits CalPERS staff "directly involved in conducting a CalPERS election" from using his/her official position to favor one candidate over another. The proposed amendment would delete the phrase "directly involved in conducting a CalPERS election."
2. Section 554.6 currently provides for a runoff election process when no candidate receives 50% plus one vote as a result of the initial CalPERS election. The proposed amendment would provide for "instant runoff" voting.

On May 26, 2006, Mr. McRitchie submitted, under Government Code section 11340.7(c), a request for reconsideration of the denial of his March 1, 2006 petition. In this request, Mr. McRitchie asserts the amendments are necessary because:

1. Section 554 is in conflict with Government Code section 19990 and therefore in violation of Government Code section 11342.2.
2. Use of the "instant runoff" method of voting in board elections will assure board members will be elected by the greatest possible majority of CalPERS members using a single ballot.

After carefully considering the request for reconsideration of CalPERS' denial of the petition to amend sections 554 and 554.6, for the reasons set forth below, CalPERS hereby affirms its denial of the petition for amendment of regulations dated March 1, 2006.

¹ All further section references are to sections in the California Code of Regulations, title 2, unless otherwise indicated.

DECISION

1. California Code of Regulations, title 2, section 554 does not conflict with Government Code section 19990, as the petition asserts. Instead, section 554 is entirely consistent with and supportive of Government Code section 19990 which sets forth general prohibitions of state officers or employees engaging in incompatible activities, and requires all appointing powers, including CalPERS, to adopt rules governing its application. Section 554 is one of the regulations CalPERS adopted and it prohibits improper influence in Board elections. Section 554 also supplements section 558, the regulation which specifically sets out CalPERS' Incompatible Activities Statement. The petition ignores the principle that administrative regulations may not override state legislation. Both sections 554 and 558 were properly promulgated under the Administrative Procedure Act (APA), and section 554 does not violate Government Code section 11342.2, which is part of the APA. Adopting a regulation such as section 554, which prohibits improper influence of Board elections, does nothing to undermine or contradict state law generally prohibiting conflicts of interest and undue influence.
2. California Code of Regulations, title 2, section 554.6 provides for ballot counting and runoff elections in Board elections. The proposed amendments to section 554.6 regarding an "instant runoff" election were addressed in the rulemaking process that amended that section in 2001 to provide for a runoff election if no candidates garnered a 50% plus one vote majority of the votes cast. Public comments suggesting that CalPERS adopt an "instant runoff" procedure for Board elections are on record in the rulemaking file and Final Statement of Reasons. (See Office of Administrative Law Notice File # Z00-1212-05, Final Statement of Reasons, p. 4.)

Furthermore, subsequent to CalPERS' initial denial of the March 1, 2006 petition to amend sections 554 and 554.6, the CalPERS Benefits and Program Administration Committee (BPAC) at its May 2006 meeting considered these issues along with numerous other items regarding the process of elections to membership of the CalPERS Board. BPAC took no action at that meeting to recommend that the Board amend the regulations, but instead directed the Chair of BPAC to work with the President of the Board to form an ad hoc committee and bring back recommendations to BPAC at a later time.

Accordingly, after careful reconsideration, CalPERS respectfully affirms its denial of the March 1, 2006 petition.

CONTACT PERSON

Interested parties may obtain a copy of the request for reconsideration and petition by contacting CalPERS.

CalPERS Contact: Carol McConnell, Deputy General Counsel
CalPERS
Lincoln Plaza North
400 Q Street, Suite 3340
Sacramento, California 95814

Dated: June 23, 2006



FRED BUENROSTRO
Chief Executive Officer