

PROPOSED REGULATORY ACTION BY CALPERS

Proposed Amendment of Sections 554.5, 554.6, 554.7, and 554.8 of Article 2 of Subchapter 1 of Chapter 2 of Division 1 of Title 2 of the California Code of Regulations

§ 554.5. Nomination of Candidates

(a) A person qualifies for nomination if he or she meets the eligibility criteria set forth in Government Code section 20090, subdivision (g), for the Board member position that is the subject of the election. To qualify for candidacy, a nominee must complete the procedures for nomination set forth in the Notice of Election. An individual nominee may not be a candidate for more than one Board member position during any particular election.

(b) Nomination shall be by petition, on the Nomination Petition form(s) provided by CalPERS and signed by the nominee. The Nomination Petition form shall include all information required by this section as provided in the Notice of Election or any Amended Notice of Election. The petition shall identify clearly the specific Board member position for which the nominee seeks election. The petition shall also set forth information required to validate the nominee's eligibility, which shall include, the nominee's full name, last four (4) digits of the nominee's Social Security number, and employer or employer at retirement. The nominee shall provide the following required contact information: address, telephone number, and email address.

(c) Active or retired members shall be eligible to sign a Nomination Petition if ~~they he or she meets~~ the eligibility criteria set forth in the Notice of Election, for the Board member position that is the subject of the election. Eligible active or retired members signing a Nomination Petition shall provide identifying information for the purpose of validating membership with CalPERS, which shall include, the member's or retired member's full name, last four (4) digits of his or her Social Security number, and employer or employer at retirement.

(d) The minimum number of petition signatures required for candidacy shall be determined by the Board at a noticed public meeting and specified in the Notice of Election. In setting the minimum number of petition signatures, the Board shall ensure candidates have a minimum level of support, while not making the number of petition signatures so high that active members and retirees are denied reasonable access to candidacy. In no event shall less than 250 valid original signatures be required. Only those petitions received in the Sacramento office of CalPERS by the date and time specified in the Notice of Election shall be accepted.

(e) Each nominee shall certify, on the Nomination Acceptance/Ballot Designation form provided by CalPERS, that he or she accepts the nomination, consents to serve if elected and agrees to abide by a drawing of lots by the Secretary of State in case of a tied vote. Those nominees that choose a title or other designation to be added to their

name on the ballot shall include the proposed title or designation on the Nomination Acceptance/Ballot Designation form. That form shall be returned to the Election Coordinator by the date and time specified in the Notice of Election.

(f) The Nomination Acceptance/Ballot Designation Form shall contain:

- (1) Ballot Designation, if the candidate so desires, chosen in accordance with the criteria set forth in section 554.4 of this article;
- (2) A date for submission pursuant to section 554.3, subdivision (b) of this article;
- (3) A certification from the nominee that they accept the nomination pursuant to section 554.5, subdivision (f); and
- (4) Job classification or job classification at retirement.

NOTE: Authority cited: Section 20121, Government Code. Reference: Section 20096, Government Code.

§ 554.6. Candidate Statements

(a) Each candidate for an elective Board member position may provide a candidate statement including the candidate's name, the word "Incumbent" when the candidate is the incumbent in the position for which the election is being held, job classification, employer (or employer at retirement), years of CalPERS-covered service, and a general statement of no more than 300 words. The statement must be truthful, and shall contain no obscene, vulgar, profane, libelous or defamatory assertions or information. The statement shall not include any remarks or questions that are inherently misleading, including rhetorical remarks.

(b) The candidate statement shall be filed with the Election Coordinator at the time the candidate accepts nomination. Once filed, candidate statements may not be changed or withdrawn except as provided herein.

(c) Within seven calendar days (or the next working day if the deadline falls on a weekend or holiday) following the end of the nomination period, the Election Coordinator shall distribute all candidate statements to each candidate in the respective contest. Each candidate shall have 10 calendar days (or the next working day if the deadline falls on a weekend or holiday) after the distribution of the candidate statements to submit an addendum to their candidate statement of no more than 300 words. No addenda may change the initial candidate statement, but addenda, if any, shall be in addition to the initial candidate statement. The Election Coordinator shall, within seven calendar days (or the next working day if the deadline falls on a weekend or holiday) after the date in which all addenda are due, provide all candidates in each respective election with all the candidate statements including addenda if any.

(d) As part of a candidate statement, a candidate is urged, but not required to provide answers to _____ the following questions:

- (1) Why do you want to be a CalPERS Board member?
- (2) What are your qualifications to hold the position of CalPERS Board member?
- (3) What are the issues of greatest importance to CalPERS?

(4) What actions would you take to address the issues of greatest importance to CalPERS?

(5) What would you do to enhance the organization?

(6) Within the past five (5) years, have you had any financial hardships, such as bankruptcy filings, insolvencies, assignments for the benefits of creditors, monetary judgements, liens and attachments, wage garnishments, notices of foreclosure, or similar hardships? If yes, please explain the nature of the hardship and how it was resolved.

(7) Have you ever been subject to any legal or employment action on the grounds of discrimination or sexual harassment? If yes, please explain the nature of the legal or employment action and how it was resolved.

(8) Do you have any conflicts of interest that could impact your role as a CalPERS Board Member? If yes, please explain the nature of the conflict(s) and how you would address it (them) if you are elected to the Board.

(9) Will you maintain the confidentiality of all non-public information that you receive in your position on the CalPERS Board?

(e) No statement may be changed or withdrawn, except that:

(1) a candidate who withdraws from the election may withdraw his/her statement at any time prior to printing, or,

(2) a candidate statement may be modified in accordance with a determination of an arbitration conducted in accordance with subdivision (f) below.

(f) Any controversy or claim arising out of or relating to a proposed candidate's statement's compliance with the provisions of this section shall be determined by a third-party arbitrator conducting arbitration in accordance with the laws of the State of California and as provided below, and the Labor Arbitration rules of the American Arbitration Association (AAA) in effect on November 15, 2000, to the extent the AAA rules are not in conflict with this subdivision.

(1) A written request for arbitration related to any candidate's statement must be filed with CalPERS Election Coordinator by a candidate not later than 5 working days after the Election Coordinator's mailing of candidate statements and addenda, if any, pursuant to subdivision (c) above. Upon the Election Coordinator's receipt of a request for arbitration, the Board or its delegate shall designate an independent, neutral third-party arbitrator to administer the arbitration. No board member who is a candidate for election that is the subject of the arbitration may participate in the selection of the arbitrator except as specified in subdivisions (2-6) below.

(2) A request for arbitration shall set forth the nature of the controversy or claim, a brief statement of the basis of the controversy or claim, and the remedy sought.

(3) Upon receipt of a request for arbitration under this section, the Election Coordinator shall mail a copy of the request to all candidates for the same seat and to the third-party arbitrator. Within seven days of mailing the request for arbitration by the Election Coordinator, any candidate for the seat that is the subject of the arbitration may request to participate in the arbitration by filing a written request with the Election Coordinator, which the Coordinator shall promptly forward to the third party arbitrator.

The candidate that submitted the request for arbitration will be a participant.

(4) The third-party arbitrator shall promptly submit simultaneously to each party requesting to participate an identical list of names of three persons chosen from its panel of arbitrators. Each party shall have seven days from the date the list is submitted in which to file an objection with the third-party arbitrator to any name, number the remaining names to indicate order of preference, and return the list to the third-party arbitrator. From among the persons for whom no objection has been filed, and in accordance with the designated order of preference, the third-party arbitrator shall invite an arbitrator to serve. If every proposed arbitrator receives an objection, or if the arbitrator selected declines or is unable to act, or if for any other reason the appointment cannot be made from the submitted lists, the third-party arbitrator shall make the appointment from among other members of the arbitrator's panel without the submission of any additional list.

(5) Any arbitration shall be held in the City of Sacramento. Any candidate for the same office may participate in the arbitration by filing notice with CalPERS. The determination of the arbitrator shall be rendered within 30 days of selection of an arbitrator and shall be final and binding on CalPERS and candidates for office.

(6) Each candidate participating in the arbitration shall bear its own expenses in connection with the preparation and presentation of his or her case at the arbitration proceedings. The fees and expenses of the arbitrator and all other expenses of the arbitration shall be borne equally by each candidate participating in the arbitration.

(g) The Election Coordinator shall distribute all deadlines and instructions related to candidate statements in writing to all candidates.

(h) Nothing in this section shall be deemed to make candidate statements or the authors thereof free or exempt from any civil or criminal action or penalty because of any statements offered for printing or distributed to voters. Information contained in the statement or addenda is the sole responsibility of the candidate. CalPERS accepts no responsibility for the validity of the candidate statement or addenda, or the contents thereof.

NOTE: Authority cited: Section 20121, Government Code. Reference: Section 20096, Government Code.

§ 554.7. Ballot Distribution.

(a) Except as provided in paragraph (b), below, the Election Coordinator shall cause ballots, candidate statements, postage paid return envelopes, and online/telephone voting instructions to be mailed by CalPERS directly to the mailing or physical address of each retired member, and to each eligible active member for whom the Board has a residence address and is permitted by law to use such address to mail these election materials. The Election Coordinator shall provide the means for eligible active and retired members for whom CalPERS does not have a valid mailing or physical address recorded to request ballots.

Paper marked ballots shall be returned to the location designated by CalPERS in the postage paid return envelope provided by CalPERS, ~~or another comparable envelope,~~ and the reverse side of the envelope shall be signed by the voter certifying under penalty of perjury that the voter is eligible to vote in the election; otherwise the paper ballot shall not be valid.

CalPERS will allow online and telephone voting. Voters submitting an online or telephone vote are required to enter a pin number provided by CalPERS, and a unique identification number, and agree to electronically certify under penalty of perjury that the voter is eligible to vote in the election; otherwise the online or telephone vote shall not be valid. CalPERS shall not require, or place, any information that identifies the voter on the paper ballot.

(b) If only one candidate has been nominated in accordance with section 554.5, the Election Coordinator shall, upon verification of the signatures presented in the nominating petition and upon the candidate's certification of his/her nomination acceptance, cancel the remaining election procedures and designate the single candidate to be certified as elected by the Secretary of State. Upon the Secretary of State's certification, the Board member elected through this process shall take his/her office on the day provided for by statute or immediately, if elected to fill a vacancy.

NOTE: Authority cited: Section 20121, Government Code. Reference: Section 20096, Government Code.

§ 554.8. Ballot Counting and Runoff Election

(a) The following are declared to be invalid ballots and shall not be counted in the election:

- (1) Votes cast for individuals not listed as candidates on the official ballot.
- (2) ~~Paper ballots~~ The return envelope not signed by the eligible voter, in accordance with the CalPERS instructions.
- (3) A duplicate ballot (paper ballot, online, telephone) received from the same voter. First ballot received is the only valid ballot.
- (4) Votes cast in excess of that allowed on the ballot.
- (5) Ballots not received within the time period prescribed by the Notice of Election.

(b) Return envelopes shall be scanned to ensure only one vote is cast per voter. Return envelopes shall not be opened until the deadline for final receipt of valid ballots. ~~Returned Paper ballots shall be opened, and ballots securely scanned solely for the purpose of validating the ballots and to ensure only one vote is cast per voter.~~ Online and telephone votes will be tracked to ensure there are no duplicate votes between voting methods. On the date specified in the Notice of Election at the location designated by CalPERS, the validated paper ballots shall be tabulated publicly by an independent, neutral agent appointed by CalPERS for that purpose. Online and telephone votes will be tabulated on the date specified in the Notice of Election and be auditable by an independent, neutral agent appointed by CalPERS for that purpose. The

candidate having a majority of the valid votes cast, 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 554.7 (b), shall be certified by the Secretary of State as having been elected.

(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.

(d) The candidate receiving the majority vote for each position 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 all valid votes cast, a runoff election will be conducted involving the two candidates who received the highest number of votes.

NOTE: Authority cited: Section 20121, Government Code. Reference: Section 20096, Government Code.