
From: James McRitchie <corpgovnet@gmail.com>
Sent: Wednesday, September 21, 2022 9:14 AM
To: CalPERS Board of Administration <CalPERS_Board_of_Administration@CalPERS.CA.GOV>
Cc: checkforcalpers2022@gmail.com
Subject: Draft Rulemaking Petition

[External Email Caution]

Please see the attached letter to the CalPERS Board of Directors, which seeks to open a discussion on adopting instant runoff voting in future elections. Over the decades ahead, such a move would save tens of millions of dollars in administrative expenses, would make elections less acrimonious, and is also likely to turn out more voters.

I hope Mr. Cheek has an opportunity at today's Board meeting to speak of this important issue during the public comment period. We look forward to working with you over the coming months during the rulemaking process.

Best Wishes,

Jim McRitchie, CalPERS member
Shareholder Advocate, [CorpGov.net](https://www.corpgov.net)

Randy Cheek, checkforcalpers2022@gmail.com & James McRitchie, jm@corpgov.net

CalPERS Board of Directors
400 Q Street, Sacramento, CA 95811
Via email: board@calpers.ca.gov

September 21, 2022

Dear CalPERS Directors:

Randy Cheek and James McRitchie, both state retirees within CalPERS, respectfully submit this DRAFT rulemaking petition pursuant to Section 11340.6 of the Government Code to adopt instant runoff voting (IRV) elections.

State agencies are required to make a determination and provide petitioners with their determination and related actions, if any, within 30 days of receipt of a formal petition for rulemaking. Since we believe that the timeframe is too short and we value an opportunity to discuss the petition with Board and Staff without such time constraints, we are submitting this petition for CalPERS to adopt instant runoff voting for elections in *draft* format.

We would welcome an opportunity to discuss this draft proposal with board members and/or staff and would be happy to arrange for presentations by organizations, such as the League of Women Voters, who endorse this type of election reform. Please contact James McRitchie at jm@corpgov.net and/or Randall Cheek at cheekforcalpers2022@gmail.com.

Our draft petition contains the three elements required by Section 11340.6. First, we provide in underline and strikeout format a draft specifying the substance of the amendments requested, including reference to the authority of CalPERS to take the action requested. Second, we explain the reason for our request. We look forward to opening a dialogue and reaching a possible agreement before filing a formal petition or obviating the need for such a petition through the Board's action.

Draft Rulemaking Petition to CalPERS under Government Code section 11340.6

Substance of the Amendments Requested

§554.8. Ballot Counting and Instant Runoff Election.

(a) Ballot Specifications and Directions to Voters

(1) 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.

(2) 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.”

~~(a)~~ (b) 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) 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 or with conflicted ranking.
- (5) Ballots not received within the time period prescribed by the Notice of Election.

~~(b)~~ (c) Return envelopes shall be scanned to ensure only one ballot vote is cast per voter. Return envelopes shall not be opened until the deadline for final receipt of valid ballots. 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. In elections involving two or fewer candidates for the same board position, The 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)~~ (d) 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)~~ (e) In elections involving two or fewer candidates for the same board position, ~~The~~ 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.~~

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

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

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

(3) 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.

(v) 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.

NOTE: Authority cited: Section 20121, Government Code. Reference: Section 20090 and 20096, Government Code.

§ 554.9. Notice of Election Results

1. (a) Within three working days after the votes are tabulated for the election ~~and runoff election, if any,~~ the Election Coordinator shall transmit the unofficial results to each candidate.
2. (b) Following certification by the Secretary of State, the Election Coordinator shall notify the candidates, Board members, staff and other interested parties of the certified results. The certified results shall also be publicized to agencies and members in a manner prescribed by the Board. Notification to the newly elected Board member shall include an Oath of Office form. This form is to be signed by the member-elect in the presence of a notary public and returned to CalPERS. The Election Coordinator shall file the Oath with the Secretary of State.
3. (c) Upon the Secretary of State certification and proper execution of the Oath of Office form, the Board member elected through this process shall take his or her office on the day provided for by statute, or if not specified by statute, the day specified in the published election schedule or immediately, if elected to fill a vacancy.

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

Reason for the Rulemaking Request

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 by requiring a runoff to ensure all board members are elected by a majority vote.

However, as CalPERS repeatedly experienced, such runoff elections are expensive, costing upwards of \$1 million. We believe and hope the Board agrees, this is not the best use of our retirement funds.

The proposed amendments would institute instant runoff voting (IRV, alternatively known as ranked-choice voting, RCV), which eliminates the "spoiler" impact of long-shot candidacies and avoids expensive 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 round of counting. All the ballots choosing the candidate with the fewest number of first choices are then redistributed to the voters'

second choice. Each successive round of counting eliminates the next lowest polling candidate, transferring those votes, until one candidate achieves a majority.

When James McRitchie previously petitioned the board to adopt this form of voting, the March 29, 2006, response by then CEO Fred Buenrostro indicated, "Any ballot required by an instant runoff voting process may be confusing to CalPERS voters and may reduce voter turnout."

Frankly, we found that statement and similar statements by members of the board offensive as the basis for "respectfully" denying the petition. Given that CalPERS serves public employees, given that public employees on average have substantially higher levels of education than private sector employees, and given vast experience with instant runoff voting in many parts of the country, this statement should now be seen as an embarrassing lapse in judgment.

The implication is that public employees are too stupid to rank candidates. Yet, many studies show that even preschool children are frequently involved in ranking preferences in their environment. CalPERS members are fully capable of ranking candidates.

Staff raised additional concerns in BPAC, Agenda Item 11, May 16, 2006. The following was Mr. McRitchie's response to those concerns at that time.

1. IRV can result in no winner being selected. *Yes, same as run-off. You could have a tie.*
2. Fringe voters decide the winner.
 - a. *The same "fringe voters" decide a runoff (assuming those who voted for candidates who make it to the runoff don't change their votes); it just takes longer.*
 - b. *"Fringe" is code for 3rd party. The dominant parties often don't want IRV because voters can vote for who they really want, without fear of helping to elect the candidate they least want.*
 - c. *In San Francisco "it took days for the final results." Yes, as in most elections, unofficial election results were posted on election night. As in any other election, they continued counting absentee and provisional ballots for a couple weeks.*
 - d. *In the 11 recent public IRV elections (7 for supervisor in 2004 in SF, 3 citywide races in 2005, and 1 Burlington mayoral race in 2006), the candidate with the most first choices won every race, and every incumbent got re-elected. No "fringe candidates won."*
3. Staff report says San Francisco approval "has not been extended." *IRV vote is in San Francisco Charter, Section 13.102. (http://www.sfgov.org/site/election_index.asp?id=27564) RCV/IRV "shall be use for the general municipal election in November 2002 and all subsequent elections." With 61% preferring IRV compared to 13% preferring a second ballot, changing the charter isn't likely.*

4. Voter education required will nullify any savings.
 - a. *Ranking preferences is an easy concept, understood by most 3-year-olds.*
 - b. *The postcard mentioned in item A4 of agenda item 11 of the May 16th BPAC meeting could serve a dual purpose, including education. If not practical, CalPERS could simply include instructions with the ballot.*
 - c. *Confusion could lead to lower turnout. Use of Ranked Choice Voting (RCV) in San Francisco's November 2005 election increased voter participation in the decisive round of the Assessor-Recorder race by an estimated 120,000 voters. (Ranked Choice Voting and Voter Turnout in San Francisco's 2005 Election <http://www.sfrcv.com/reports/turnout.pdf>) I have never seen any evidence of lower turnout in IRV elections. What evidence does CalPERS have that IRV reduces turnout? I would happy to rebut an assertion of facts.*

Of course, we now have more years of IRV/RCV experience in statewide Alaska and Maine) and many local elections.

In addition to saving CalPERS potentially in excess of \$1M for runoff elections, IRV/RCV incentivizes less toxic campaigns. IRV/RCV candidates compete for second-choice votes from their opponents' supporters, which lessens the incentive to run negative campaigns. Candidates do best when they reach out positively to all potential voters, including those who support their opponents. Voters are more likely to turn out when they can express their choice of candidates without compromise. For more information see Fair Vote at <https://fairvote.org/our-reforms/ranked-choice-voting-information/>.

Sincerely,

Randall Cheek

James McRitchie