PROPOSED REGULATORY ACTION BY CALPERS

Amendment of Article 2, Sections 554, 554.1, 554.2, 554.3, 554.4, 554.5, 554.6, 554.7, 554.8, 554.9 and 554.10 and Adoption of Section 554.11 of Subchapter 1, Chapter 2 of Division 1 of Title 2 of the California Code of Regulations

§ 554. Election of Board Members

Board member elections shall be conducted by the Election Coordinator designated by the Chief 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~~ Election Coordinator 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.

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

§ 554.1. Agency Responsibilities in Active Member Elections.

Each public agency and each State department shall ensure their worksites are in compliance with the Campaign Guidelines set forth in section 554.2. Candidates are responsible for bringing complaints of worksite election violations to the attention of the employer or employer representative responsible for the control of the worksite at which the alleged violation of the Campaign Guidelines occurred. Employers shall apply the Campaign Guidelines impartially, and shall attempt when possible to harmonize the requirements set forth in section 554.2 with their own policies and procedures. An employer's operational needs are to be given substantial deference. An employer or employer representative's decision on how, if at all, to respond or remedy an alleged campaign violation shall be considered final, and will not be reviewed by CalPERS except as part of the election protest procedures set forth in section 554.11.

~~appoint an Agency Election Officer at the request of the Board in elections for Board members. Agencies shall immediately notify the Board of any change in the appointment. Agency Election Officers shall:~~

~~(a) Certify that the designated Election Officer understands and will comply with the election instructions and that actions taken will be compatible with ethical election practices.~~

~~(b) Ensure the timely distribution to eligible members or posting of election materials sent by the Election Coordinator's, according to the Election Coordinator's instructions.~~

~~(c) Ensure impartiality of the election process within the agency.~~

~~(d) Ensure no campaign material is distributed with the election material sent by the Election Coordinator.~~

~~(e) Promptly provide any information necessary to the election process at the request of the Election Coordinator.~~

~~(f) Certify, under penalty of perjury, that election materials were forwarded to PERS members in that agency, as instructed by the Election Coordinator.~~

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

§ 554.2. Campaign Guidelines

Candidates shall adhere to the following campaign guidelines:

(a) Candidates may not use any state or local agency buildings or facilities for campaign purposes as set forth in Government Code sections 8314, 82015, and 82025.

(b) Candidates may campaign in public areas of CalPERS owned properties in a manner that does not interfere with business activities.

(c) Campaign literature may be posted subject to conditions or restrictions established by employer policies or applicable collective bargaining agreements.

(d) Candidates may not use CalPERS logo, website, or other trademarks in campaign materials.

(e) Candidates may distribute campaign materials at a CalPERS sponsored candidate forum at locations designated by CalPERS.

(f) Campaign signs may not be posted on any CalPERS property.

(g) CalPERS staff, unless running as a candidate, may not be photographed for use in campaign materials.

(h) Candidates shall not use public resources for campaign purposes, including, but not limited to, the use of government telephones, computers, mailing addresses, web pages, land, buildings, or other resources.

(i) Candidates are prohibited from claiming reimbursement from an employer or CalPERS for trips to promote their candidacy.

§ 554.3~~2~~. Notice of Election.

(a) Before each election for a Board member identified in Government Code section 20090, subdivision (g) or a special election to fill a vacancy pursuant to Government Code section 20095, a Notice of Election shall be presented to the Board ~~the Board shall adopt a Notice of Election. The complete text of the Notice of Election shall be adopted~~ as an agenda item at a regularly noticed public meeting of the Board.

(b) The Notice of Election shall contain:

~~i.~~(1) A statement of whether, at the time of the adoption of the Notice of Election, the incumbent intends to be a candidate for reelection, pursuant to Government Code section 20096.3;

~~ii.~~(2) The election schedule, ~~including without limitation,~~ the submission date for the ~~submission of~~ Nomination Petition ~~forms~~, Nomination Acceptance/Ballot Designation forms~~, and the dates of the election~~ pursuant to this section and section 554.5~~3~~ of this article;

~~iii.~~(3) Eligibility criteria for candidates and voters pursuant to Government

Code section 20090, subdivision (g);

~~iv.~~(4) Candidate nomination and election procedures as provided in section 554.5~~3~~ of this article;

~~v.~~(5) Information required by the Nomination Petition as provided in section 554.5~~3~~, subdivisions (b) and (c), of this article;

~~vi.~~(6) The minimum number of valid original signatures required for nomination as a candidate pursuant to section 554.5~~3~~, subdivision (~~e~~d) of this article; and

~~vii.~~(7) Such other information as determined by the Board at the noticed public meeting.

(c) The election schedule shall provide the Board adequate time and flexibility to accommodate the nomination ~~and candidate statement arbitration processes~~ and candidate statement arbitration processes, various administrative procedures and voting periods, including the opportunity for a runoff ~~run-off~~ election, if necessary, and to seat the newly elected Board members by statutory deadlines. In no event shall ballots be distributed to voters earlier than 60 days after the adoption of the original Notice of Election.

(d) Any amendment to the Notice of Election, including amendments to the election schedule, shall be set forth in an Amended Notice of Election, adopted at a noticed public meeting of the Board.

(e) The Election Coordinator shall publish the Notice of Election before each election, using methods designed to provide adequate notice to potential candidates and voters, including but not limited to:

~~a.~~(1) Posting the Notice of Election on the CalPERS website.

~~b.~~(2) Mailing the Notice of Election directly to eligible retired members.

~~c.~~(3)Providing employers with ~~sufficient copies of the~~ electronic Notice of Election ~~to allow~~ for widespread ~~notice~~ dissemination to employees.

~~(f) Agency Election Officers shall provide notification to eligible active members by direct distribution of the Notice of Election to members or by posting the Notice of Election in employee work areas.~~

NOTE: Authority cited: Section 20121, Government Code. Reference: Sections 20090, 20095 and 20096, Government Code.

§ ~~554.10~~554.4. Ballot Designations

(a) Each candidate for an elective Board member position may choose a Ballot Designation at the time he or she certifies acceptance of nomination as a candidate. The Ballot Designation will be printed below the candidate's name, on the ballots that are mailed to each, eligible voter and will appear after the candidate's name on the online and telephone ballots. The Ballot Designation must be accurate and not misleading and conform to the following guidelines: ~~. Each candidate must choose a single Ballot Designation, in conformity with the following guidelines:~~

~~(a)~~ (1) If the candidate already holds the Board member position to which he or she is seeking election, then the candidate may use the single word "Incumbent" and this is the only time it may be used as a designation. ~~The word "Incumbent" may not be used in conjunction with the candidate's title as a CalPERS Board member.~~

~~(b) If the candidate holds an elected office at any level of government, or is an elected or appointed judge for a court of record in California, at the time he or she~~

~~certifies acceptance of nomination, he or she may use the title of that office. If the candidate is retired from that office, the title may still be used, if preceded by the word "Retired." The candidate shall not make any other reference to a prior elected or appointed office, such as by the word "former" or "ex."~~

~~(c)~~ (2) The candidate may designate the principal profession or occupation in which he or she is engaged, at the time he or she certifies acceptance of nomination. This designation may be general or specific, but it shall not exceed three words in length. If the candidate is retired from the principal profession or occupation, it may still be designated if preceded by the word "Retired." ~~Any geographic reference that is part of the designation shall count as one word, but the word "Retired" shall not count. The candidate shall not make any other reference to prior professional or occupational status, such as by the word "former" or "ex."~~

~~(d) The candidate shall not use the Ballot Designation to state, or imply, an endorsement or alliance. This means the designation cannot name a political party or any racial, religious or ethnic group. The candidate shall not use the Ballot Designation to state, or imply, a particular level of skill or performance. This means the designation cannot be modified by adjectives such as outstanding, leading, expert, virtuous, or eminent.~~

(3) The determination of whether or not a Ballot Designation conforms to these guidelines shall be made in the sole discretion of the Election Coordinator. The Election Coordinator may request the candidate to verify the truthfulness of the ~~b~~Ballot ~~d~~Designation. If a Ballot Designation does not conform, in whole or in part, it shall be reformed by the Election Coordinator with prior notice to the candidate, before it is printed on the ballots.

(b) The Election Coordinator will provide each candidate with written criteria for choosing a Ballot Designation in conformity with these guidelines, including examples of designations that were used in prior elections. The choice of Ballot Designation must be made by each candidate, and CalPERS ~~the California Public Employees' Retirement System~~ accepts no responsibility for the content or validity of a given Ballot Designation.

~~The amendments to this section adopted on March 21, 2001 shall become operative on January 16, 2002. The addition of this section filed August 24, 1998 shall remain in effect until that time.~~

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

§ 554.5~~3~~. 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 ~~the System, addressed to the Board~~ 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 ~~also~~ provide the following required contact information~~,~~: ~~such as~~ address, telephone number, ~~fax number,~~ and email address.

(c) Eligible active ~~A member~~ or retired members shall be eligible to sign a Nomination Petition if he or she meet~~s~~ the eligibility criteria set forth in ~~Government Code section 20090, subdivision (g)~~ the Notice of Election, for the Board member position that is the subject of the election. ~~Members~~ Eligible active or retired members signing a Nomination Petition shall provide identifying information for the purpose of validating membership ~~in the System~~ 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 Nomination Petition Form shall be provided by the System as follows, pages 1 and 2 are reproduced below; subsequent identically formatted pages will be provided by the System for signature lines numbered 8 - 300:~~

CalPERS

Remove Form

Nomination Petition (election name) Election

Important: The Nomination Petition, endorsed with **at least 250 original signatures of eligible (active/retired) members**, must be **received** by the California Public Employees' Retirement System (CalPERS) at the address below **no later than (date), 5:00 p.m. Firm**. The Nomination Petition provides fifty (50) additional name/signature lines. Only Nomination Petitions supplied by CalPERS will be acceptable.

California Public Employees' Retirement System
Attention: CalPERS Election Coordinator
Lincoln Plaza – 400 Q Street, Room (room number)
P.O. Box 942702
Sacramento, CA 94229-2702
Telephone: (916) 795-3952, local, or (800) 794-2297, toll free

Nomination

We, the undersigned, **(active and/or retired)** members of the California Public Employees' Retirement System, place in nomination _____ **(nominee full name)** _____ as a member to the Board of Administration, California Public Employees' Retirement System. The nominee is **(employed by/retired from)** (agency) _____

_____
Nominee's Street Address

XXX – XX – ___ ___ ___ ___
Last Four Digits of the Social Security Number*

_____
City State Zip Code

_____
Signature of Nominee Consenting to Nomination

(_____) _____
Nominee's Daytime Telephone Number

_____
Nominee's E-Mail Address

(_____) _____
Nominee's Fax Number

Information Needed for Verification of System Membership

	Name*		**Last Four Digits of the Social Security Number***
1.	_____ First Name (Print)	_____ Last Name (Print)	**XXX – XX –** ___ ___ ___ ___

_____ (Signature) (employed by / retired from) _____ (Agency)

* **NOTE:** The last name, first name and the last four digits of the social security number are being sought for the sole purpose of verifying CalPERS membership against the CalPERS database. Be advised that in some cases, the information provided may not be sufficient to verify CalPERS membership or may delay verification of eligible signers. In the event CalPERS membership cannot be verified, the signature will be deemed invalid and not counted.

CalPERS-BRD-74B (10/11)

Remove Form

Nomination Petition (election name) Election, for:_____

Name*		**Last Four Digits of the Social Security Number***
2. First Name (Print) _____ Last Name (Print) _____		**XXX – XX –** ___ ___ ___ ___
(Signature) _____	(employed by / retired from)	(Agency) _____
3. First Name (Print) _____ Last Name (Print) _____		**XXX – XX –** ___ ___ ___ ___
(Signature) _____	(employed by / retired from)	(Agency) _____
4. First Name (Print) _____ Last Name (Print) _____		**XXX – XX –** ___ ___ ___ ___
(Signature) _____	(employed by / retired from)	(Agency) _____
5. First Name (Print) _____ Last Name (Print) _____		**XXX – XX –** ___ ___ ___ ___
(Signature) _____	(employed by / retired from)	(Agency) _____
6. First Name (Print) _____ Last Name (Print) _____		**XXX – XX –** ___ ___ ___ ___
(Signature) _____	(employed by / retired from)	(Agency) _____
7. First Name (Print) _____ Last Name (Print) _____		**XXX – XX –** ___ ___ ___ ___
(Signature) _____	(employed by / retired from)	(Agency) _____

* **NOTE:** The last name, first name and the last four digits of the social security number are being sought for the sole purpose of verifying CalPERS membership against the CalPERS database. Be advised that in some cases, the information provided may not be sufficient to verify CalPERS membership or may delay verification of eligible signers. In the event CalPERS membership cannot be verified, the signature will be deemed invalid and not counted.

CalPERS-BRD-74B (10/11)

~~(e)~~ (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 ~~will~~ shall ~~consider the goals of ensuring~~ ensure candidates have a minimum level of support, while not making the number of petition signatures so high that active ~~and providing~~ 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 ~~the System~~ CalPERS by the date and time specified in the Notice of Election shall be accepted.

~~(f)~~ (e) Each nominee shall certify, on the Nomination Acceptance/Ballot Designation form provided by CalPERS ~~the System~~, 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. ~~If a nominee chooses to submit a Ballot Designation, he or she shall include the proposed Ballot Designation on the Nomination Acceptance/Ballot Designation form. The nominee shall return the Nomination Acceptance/Ballot Designation form by the date and time specified in the Notice of Election to have his or her name placed on the ballot.~~

(f) The Nomination Acceptance/Ballot Designation Form shall contain ~~be provided by the System as follows~~:

(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. ~~Such other information as determined by the Board.~~

CalPERS

Remove Form

NOMINATION ACCEPTANCE/BALLOT DESIGNATION FORM

IMPORTANT: COMPLETE AND FILE THIS FORM NO LATER THAN {date}, 5:00 P.M. FIRM, (CERTIFIED MAIL IS RECOMMENDED) TO:

California Public Employees' Retirement System
ATTENTION: CalPERS Election Coordinator
Lincoln Plaza West - 400 Q Street, Room W2580
P.O. Box 942702
Sacramento, CA 94229-2702

NOMINATION ACCEPTANCE/NON-ACCEPTANCE

Please select either Item #1 or #2 below by marking the appropriate box.

1. ☐ Upon CalPERS determination that I am a qualified candidate, I accept the nomination for election as a member of the Board of Administration to fill the position whose term will begin January 16, {date}, and expire on January 15, {date}. I consent to serve if elected and agree to abide by the result of a drawing of lots by the Secretary of State in case of a tied vote. I submit the following information:

   Name and proposed Ballot Designation as I wish it shown on the ballot:

   Name: _____
   (Please type or print)

   Proposed Ballot Designation: _____
   (See California Code of Regulations, section 554.10, attached)

   Employer or Employer At Retirement: _____

   Job Classification or Job Classification at Retirement: _____

   Total years of CalPERS-covered service in California: _____

2. ☐ I do not accept the nomination for the terms as set forth above.

I understand that if I decide to withdraw my candidacy after submitting this certified form, if I checked box #1 above, I must notify the CalPERS Board Election Coordinator by phone at (916) 795-3952 and follow-up in writing at the address shown above within ten (10) working days following the nomination acceptance deadline date in order to have my name removed from the ballot and candidate statement information.

➔ Turn this form over. Read and complete the **CANDIDATE STATEMENT/ADDENDUM** and **CERTIFICATION** section.

Remove Form

CANDIDATE STATEMENT/ADDENDUM

I understand that the California Public Employees' Retirement System will distribute with the ballot for the election (and runoff election if one is held) a candidate statement and candidate statement addendum for candidates who prepare them. I understand that the statement(s) must be truthful, and shall contain no obscene, vulgar, profane, libelous, or defamatory matter. The statement(s) shall not include any remarks or questions that are inherently misleading, including rhetorical remarks and questions that are inherently misleading.

I understand that once filed, the statement(s) may not be changed or withdrawn except as provided in CalPERS regulations at Title 2 California Code of Regulations Section 554.4(d), (e) Candidate Statements. I further understand that if candidate statement arbitration is conducted, and if I participate in the candidate statement arbitration, then, as stated in regulation Section 554.4(d), (e)(6):

- I will bear my own expenses in connection with the preparation and presentation of my 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.

CERTIFICATION

My signature below certifies my understanding of the information on this form regarding nomination acceptance/non-acceptance, withdrawing candidacy and the candidate statement. My signature below also certifies that I have completed the information on this form.

SIGNATURE: _____

ADDRESS: _____

_____

TELEPHONE NUMBER: (____)_____

DATE: _____

~~(h) The amendments to this section adopted on March 21, 2001 shall become operative on January 16, 2002. The amendments to Section 554.3 filed July 2, 1982, shall remain in effect until that time.~~

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

§ 554.~~6~~4. 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 ~~matter~~. The statement shall not include any remarks or questions that are inherently misleading, including rhetorical remarks~~ and questions that are inherently misleading~~.

(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 ~~7~~ 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 ~~such longer period as the Election Coordinator may provide to all candidates~~) after the distribution of the candidate statements ~~by the Election Coordinator~~ to submit ~~to the Election Coordinator~~ an addendum to ~~the candidate's~~ 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 ~~7~~ 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 some or all of 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?

(~~d~~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 (~~e~~f) below.

(~~e~~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 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.

(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.

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

(~~g~~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. ~~and the~~ CalPERS ~~California Public Employees' Retirement System~~ accepts no responsibility for the validity of the candidate statement or addenda, or the contents thereof.

~~The amendments to this section adopted on March 21, 2001 shall become operative on January 16, 2002. The amendments to Section 554.4 filed August 24, 1998 shall remain in effect until that time.~~

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

§ 554.7~~5~~. Ballot Distribution.

(a) Except as provided in paragraph (b), below, the Election Coordinator shall cause ballots, candidate statements, ~~and~~ postage paid return envelopes, and online/telephone voting instructions to be mailed by CalPERS ~~the System~~ directly to the mailing or physical address ~~residence~~ 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. ~~For those eligible active members for whom the Board does not have access to a legally permissible residence address, the Election Coordinator shall forward their ballots, candidate statements, and postage paid return envelopes to the Agency Election Officer with instructions to ensure that these materials are immediately provided to the identified member(s). For purposes of this section, "eligible active member" means a member of the System who is employed, on the date specified in the Notice of Election's criteria for voter eligibility, by an employer participating in the System.~~

Paper marked ~~Marked~~ ballots shall be returned to the location designated by CalPERS ~~PERS~~ in the postage paid return envelope provided by CalPERS ~~the System~~, or another comparable envelope, and the ballot ~~or reverse side of the envelope, as instructed by CalPERS,~~ 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 ~~electronic~~online and telephone voting. ~~Electronic and telephone voting must be cast in the manner prescribed by CalPERS.~~ 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.

(b) ~~Where~~ If only one candidate has been nominated in accordance with section 554.5~~3~~, 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: Sections 20096 and 20121, Government Code. Reference: Section 20096, Government Code.

§ 554.8~~6~~. Ballot Counting and Runoff Election

(a) ~~Depending upon the method of balloting selected by the Election Coordinator, the~~ 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 ~~or ballot envelopes~~ 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.

~~(6) Electronic and phone ballots not cast in the manner prescribed by CalPERS.~~ ~~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 inspected, and counted publicly by an independent, neutral agent appointed by CalPERS for the 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 554.75(b), shall be certified by the Secretary of State as having been elected.~~

(b) ~~Valid ballots P~~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. ~~inspected, and, if valid, counted~~ 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 ~~the~~ 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~~b~~) 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~~c~~) 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 ~~(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.

~~(d) 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.~~

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

§ 554.9~~7~~. Notice of Election Results

(a) Within three working days after the votes are tabulated for ~~public ballot canvassing of~~ the election and runoff election, if any~~, or after verification of the nominating signatures and certification of nomination acceptance as provided in section 554.5(b)~~, the Election Coordinator shall ~~post the unofficial election results and~~ transmit the ~~these~~ unofficial results to each candidate.~~, utilizing express mail services~~.

(b) Following certification by the Secretary of State, the Election Coordinator shall notify the ~~Executive Officer,~~ candidates, Board members, staff and other interested parties of the ~~official,~~ certified results. The certified results shall also be publicized to agencies and members in a manner prescribed by the ~~b~~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 ~~member~~ in the presence of a notary public and returned to CalPERS ~~the System~~. The Election Coordinator shall file the Oath with the Secretary of State.

(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. ~~Election results shall be publicized to agencies and members in a manner prescribed by the Board.~~

~~The amendments to this section adopted on March 21, 2001 shall become operative on January 16, 2002. The amendments to this section filed July 17, 1995 shall remain in effect until that time.~~

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

§ 554.10~~8~~. Recount of an Election

(a) A request for a recount shall not delay the seating of an elected Board member. Such elected Board member shall take office, in accordance with the published election schedule, subject to the potential termination of such Board membership as a result of the recount.

(b) A candidate in the affected Board member election may file a written request with the Election Coordinator at the Sacramento Office of CalPERS for recount within 10 ~~ten~~ working days following the electronic transmission to each candidate of ~~the mailing of~~ the unofficial ~~election~~ results, and/or ~~of~~ the unofficial runoff ~~election~~ results, if any, ~~otherwise, of the election~~; otherwise, there shall be no opportunity for requesting a recount and the certified election results stand as the official results.

(c) A written request for a recount shall specify the election to be recounted, shall be signed by the candidate requesting the recount, and may specify any other relevant material to be examined.

(d) The Election Coordinator shall set a date for the recount upon receipt of the written request, and shall confirm this date upon receipt of the estimated cost to conduct the recount. The estimated cost of conducting a recount will include CalPERS' ~~the system's~~ administrative cost and the costs of the ballot counting contractor, if applicable. Legal tender of the amount of the estimated cost of conducting the recount shall be submitted by the candidate requesting the recount to the Election Coordinator within three working days following notification of the estimated cost to conduct the recount; otherwise, the recount shall be terminated.

(e) If the results of the recount do not change the outcome of the election ~~ranking of the candidates (either the unofficial ranking or the certified ranking, depending upon whether the unofficial results have been certified by the Secretary of State as of the date of the recount)~~, then the unofficial results shall, upon receipt of certification from the Secretary of State ~~certification~~, stand as the official election results. In this case, if the actual cost of the recount is less than the estimated cost deposited by the requester, CalPERS shall refund the amount which exceeds the actual cost.~~; if~~ If the actual cost of the recount is more than the estimated cost, CalPERS shall invoice the requester, who shall be responsible for paying the difference between the amount deposited and any additional costs.

(f) If the results of the recount do change the ranking of the candidates ~~(either the unofficial ranking or the certified ranking, depending upon whether the unofficial results have been certified by the Secretary of State as of the date of the recount)~~, then the recount results shall be resubmitted to the Secretary of State for certification as the official election results. In this case, CalPERS shall refund the amount of the estimated cost deposited by the requester.

~~The amendments to this section adopted on March 21, 2001 shall become operative on January 16, 2002. The amendments to this section filed August 24, 1998 shall remain in effect until that time.~~

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

§ 554.11~~9~~. Protest of an Election

(a) The filing of a protest shall not delay the seating of an elected Board member. Such elected Board member shall take office, in accordance with the published election schedule, subject to the potential termination of such Board membership as a result of the protest. Any newly elected member, as the result of a protest, shall hold office for a period equal to the remainder of the term of the vacated office.

(b) ~~Any party who is an active or retired member of CalPERS, eligible to vote in the applicable Board member election,~~ A candidate may protest an election or a runoff election. ~~if any, or an election, if no runoff election is conducted~~. A protest shall be filed with the Election Coordinator at the Sacramento Office of CalPERS within 10 ~~ten~~ working days after ~~following~~ the transmission ~~mailing~~ of the certified election results to

all parties. A protest shall be in writing, shall be identified using the word "protest", shall specify the election, and shall state the grounds of the protest and suggested remedy.

(c) Upon receipt of a valid and timely protest, the Election Coordinator shall mail a copy of the request to all candidates for the same seat. The Board or its designee shall appoint an independent, neutral agent which shall designate a Protest Panel using the following process. The independent agent shall promptly submit simultaneously to each candidate for the same office that is subject of the protest an identical list of names of at least five persons chosen from its panel of arbitrators. Each candidate shall have seven days from the date the list is submitted in which to file an objection with the agent to any name, number the remaining names to indicate order of preference, and return the list to the agent. From among the persons for whom no objection has been filed, and in accordance with the designated order of preference, the agent shall invite members to serve on the Protest Panel. If every proposed panel member receives an objection, or if a panel member selected declines or is unable to act, or if any other reason the appointment cannot be made from the submitted list, the agent shall make the appointment from among other members of the agent's panel of arbitrators without the submission of any additional list. No Board member who is a candidate for election that is the subject of the protest may participate in the selection of the Protest Panel. The decision of the Protest Panel shall be final. The Protest Panel shall be comprised of no less than three people, all of whom are neither employed by CalPERS nor otherwise interested in the outcome of the election that is the subject of the protest. For purpose of the foregoing sentence only, membership in CalPERS does not, by itself, constitute an "interest in the outcome of the election." The Protest Panel shall consider written and/or oral arguments submitted by the protestor and any other interested party, including the Board's staff. Any oral proceedings shall be held in the City of Sacramento. The determination of the Protest Panel shall be rendered within 30 days of selection of the Panel and shall be final and binding on CalPERS and candidates for office. Other procedures, including those for receiving and considering arguments and factual allegations, shall be determined by the Protest Panel in its sole discretion. A protest shall only be granted upon a finding that Board- adopted election procedures were not substantially followed and that, without this lack of substantial compliance, the election outcome would likely have been different.

(d) Each candidate participating in the protest shall bear their own expenses in connection with the preparation and presentation of his or her case at the protest proceedings. The fees and expenses of the independent, neutral agent, protest panel, and all other expenses of the protest shall be borne equally by each candidate participating in the protest.

NOTE: Authority cited: Section 20121, Government Code. Reference: Section 20121, Government Code; Duva, Calif. School Employees' Assoc. v. PERS., et al., 1993 Sacramento Superior Court Case No. 375842.