

Title 2 California Code of Regulations §554 through §554.11

§ 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 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 Election Coordinator and shall be completed each time an election is held. No CalPERS staff 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.

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.

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

§ 554.3. 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 as an agenda item at a regularly noticed public meeting of the Board.
- (b) The Notice of Election shall contain:
 - (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;
 - (2) The election schedule, the submission date for the Nomination Petition, Nomination Acceptance/Ballot Designation forms pursuant to this section and section 554.5 of this article;
 - (3) Eligibility criteria for candidates and voters pursuant to Government Code section 20090, subdivision (g);
 - (4) Candidate nomination and election procedures as provided in section 554.5 of this article;
 - (5) Information required by the Nomination Petition as provided in section 554.5, subdivisions (b) and (c), of this article;
 - (6) The minimum number of valid original signatures required for nomination as a candidate pursuant to section 554.5, subdivision (d) of this article; and
 - (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, various administrative procedures and voting periods, including the opportunity for a runoff 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:
 - (1) Posting the Notice of Election on the CalPERS website.
 - (2) Mailing the Notice of Election directly to eligible retired members.
 - (3) Providing employers with electronic Notice of Election for widespread dissemination to employees.

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

§ 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:
 - (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.
 - (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."
 - (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 Ballot 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 accepts no responsibility for the content or validity of a given Ballot Designation.

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

§ 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 also 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 meet 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 notwithstanding whether he or she submits a notice of participation.
 - (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 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: Sections 20096 and 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) 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. 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 20090 and 20096, Government Code.

§ 554.9. Notice of Election Results

- (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.
- (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.
- (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.

§ 554.10. 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 results, and/or the unofficial runoff results, if any; 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' 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, then the unofficial results shall, upon receipt of certification from the Secretary of State, 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 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, 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.

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

§ 554.11. 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) A candidate may protest an election or a runoff election. A protest shall be filed with the Election Coordinator at the Sacramento Office of CalPERS within 10 ten working days after the transmission 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.