

Randy Cheek, CT Weber and
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CalPERS CEO and Board of Directors
400 Q Street, Sacramento, CA 95811
Via email: board@calpers.ca.gov

April 10, 2023

Dear CalPERS CEO and Directors:

Randy Cheek, CT Weber, and James McRitchie, state retirees within CalPERS, respectfully submit this rulemaking petition pursuant to Section 11340.6 of the Government Code requesting CalPERS adopt rank choice voting (RCV) in 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. We submitted a draft petition on September 21, 2022, but delayed this formal petition to a more appropriate time to fit the CalPERS rulemaking calendar. The Finance and Administration Committee will take up this topic during its April 17, 2023, meeting as agenda item 5e.

We hope the Board will act on April 17, 2023, to refer the petition to staff for study and their recommendation.

Of course, 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 or consultations with organizations, such as the League of Women Voters and Fair Vote, that endorse RCV. Please contact James McRitchie at jm@corpgov.net.

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. Second, we explain the reasons for our request. Third, we reference the authority of CalPERS to take the action requested. We look forward to opening a dialogue and reaching a possible agreement on updating how CalPERS conducts Board elections.

Substance of the Amendments Requested

§554.8. Ballot Counting and ~~Runoff Election~~ Ranked Choice Voting.

(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.

~~(e)~~ (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 has no more advancing candidates because all the candidates on that ballot have been eliminated, that ballot shall be declared "exhausted" and shall not be counted in that round or any subsequent round. Ballots skipping numbers shall be counted for that voter's next clearly indicated choice. Ballots with two or more advancing (that is, not eliminated) candidates ranked with the same number shall be treated as an overvote and not be counted in that round or any subsequent round. Ballots with two or more candidates ranked with the same number, of which only one is advancing in that round, will count for the 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.

(vi) If a candidate withdraws prior to or during the election, they shall be treated as an eliminated candidate, including in the first round, and any ballot that would otherwise be counted for them shall be counted for the highest advancing candidate on that ballot.

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 than 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 were elected by a majority vote.

However, as CalPERS repeatedly experienced, such runoff elections are expensive, costing more than \$2.5 million for a single election during 2017-2018. We believe and hope the Board agrees that this is not the best use of our funds.

The proposed amendments would institute ranked choice voting (RCV, alternatively known as instant runoff voting), eliminating the "spoiler" impact of long-shot candidacies and avoiding expensive elections. RCV 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 voter's 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. 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.

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 ranked choice voting in many parts of the country, this statement should now be seen as an embarrassing lapse in judgment. 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. RCV/IRV "shall be used 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, Maine, and next Hawaii) and many local elections. In Alaska's 2022 Congressional Special Election, 73% ranked more than one candidate,¹ 85% found ranked-choice voting simple,² and 99.8% of votes cast were valid.³ In Maine, turnout for both the 2018 (first midterm election using RCV)⁴ and the 2020 (first presidential election with RCV)⁵ elections were higher than previous comparable elections.

In addition to saving CalPERS potentially in excess of \$2.5M for each runoff election, RCV incentivizes less toxic campaigns. 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 Vote⁶ and NBC News.⁷

Sincerely,



James McRitchie

Randy Cheek

CT Weber

¹ https://fairvote.org/press/alaska_cast_vote_record_released/

² <https://www.alaskansforbetterelections.com/polling-shows-alaskan-voters-understand-ranked-choice-voting/>

³ <https://www.elections.alaska.gov/results/22SSPG/RcvDetailedReport.pdf>

⁴ https://ballotpedia.org/Voter_turnout_in_United_States_elections

⁵ <https://www.bangordailynews.com/2020/11/25/politics/maines-2020-election-turnout-was-among-highest-in-us/>

⁶ <https://fairvote.org/our-reforms/ranked-choice-voting-information/>

⁷ <https://www.nbcnews.com/politics/politics-news/big-year-states-push-ranked-choice-voting-rcna64945>