



California Corporate & Securities Law

“It’s Dark as a Dungeon Way Down in the Mines” – CalPERS Declines to Vote Against Massey Energy Co. Proposal

Posted In [CalPERS/CalSTRS, Corporate Governance](#)

10-5-2010

Last week, I expressed surprise in this [post](#) about the California Public Employees Retirement System’s recent announcement that it plans to abstain on a proposal by Massey Energy Company to jettison cumulative voting. My surprise was based on the fact that Government Code Section 6900 specifically and unequivocally requires CalPERS and other state agencies to vote in favor of cumulative voting. I did ask CalPERS for a comment on its position and I received the following response on Monday:

Generally, CalPERS supports cumulative voting. However, in formulating a vote recommendation in Massey Energy’s case, we considered the following:

- 1. California Government Code Section 6900. We also had lengthy correspondence with Massey that described why we would not be supporting management’s cumulative vote proposal pursuant to Section 6900.*
- 2. CalPERS’ “Abstain” vote is a vote to withhold support from management’s cumulative vote proposal as the proposal requires the affirmative (FOR) vote of 80% of the shares outstanding. CalPERS vote will not be included in the number of affirmative votes needed to pass the proposal.*
- 3. Section 6900 requires CalPERS to support a resolution that “permits or authorizes” cumulative voting. The management proposal at Massey is requesting approval for the elimination of cumulative voting*

While I recognize that Section 6900 does not expressly require CalPERS to vote against the repeal of cumulative voting, a failure to oppose the repeal of cumulative voting certainly runs counter to the clear intent of Section 6900 – *i.e.*, requiring state agencies to support cumulative voting.

It will be interesting to see if Massey Energy’s management will garner the votes necessary to repeal cumulative voting at its meeting tomorrow. In addition to obtaining CalPERS’ agreement to abstain, Massey Energy has also disclosed in additional [soliciting material](#) that both ISS Proxy Advisory Services and Glass Lewis & Co. are recommending support for its proposals.

Please contact [Keith Paul Bishop](#) at Allen Matkins for more information kbishop@allenmatkins.com

<http://www.calcorporatelaw.com/>

Massey Energy is the largest coal company in Central Appalachia and one of the largest in the United States. Since last April, Massey Energy has been in the news because a terrible explosion in its Upper Big Branch mine killed 29 miners. Section 1503 of the Dodd–Frank Wall Street Reform and Consumer Protection Act contains new reporting requirements regarding mine safety, including disclosing on a Current Report on Form 8–K the receipt of an imminent danger order under section 107(a) of the Federal Mine Safety and Health Act of 1977 issued by the Mine Safety and Health Administration. On September 3, 2010, Massey Energy filed this [Form 8–K](#) disclosing that it had received two imminent danger orders, including one with respect to its Upper Big Branch mine. According to the filing, no injuries resulted from the conditions described in either order.

Please contact **Keith Paul Bishop** at Allen Matkins for more information kbishop@allenmatkins.com

<http://www.calcorporatelaw.com/>