



Agenda Item 5

November 14, 2012

ITEM NAME: Board Confidentiality Policy (Second Reading)

PROGRAM: Board Governance

ITEM TYPE: Action

RECOMMENDATION

Staff recommends the Committee approve the Board Confidentiality Policy (Attachment 1).

EXECUTIVE SUMMARY

The proposed Board Confidentiality Policy (Policy) incorporates Committee member comments provided during the first reading of the Policy at the October 16, 2012 Board Governance Committee meeting.

STRATEGIC PLAN

The proposed Policy supports the Strategic Plan's goal to "Cultivate a high-performing, risk-intelligent and innovative organization." The Policy will enhance the Board's governance and support a more robust risk-intelligent culture. The proposed Policy aligns with the vision of CalPERS "a trusted leader respected by our members and stakeholders for our integrity, innovation and service."

BACKGROUND

From March through September 2011, the Board engaged Funston Advisory Services LLC, with the assistance of outside fiduciary counsel, to develop recommendations to improve the effectiveness of the Board by improving oversight, clarifying accountability, and improving decision-making. The Board's Governance Policy prohibits the use of Confidential Information for personal gain or for the benefit of outside interests.

ANALYSIS

The Policy defines what is collectively referred to as "Confidential Information" and outlines the procedures for Board Members to follow in order to protect Confidential Information.

Revisions to the proposed Policy, presented in red and underlined text, have been incorporated to provide additional clarification. A summary of significant revisions is as follows:

CalPERS staff will identify Confidential Information: Additional language is proposed to clarify that CalPERS staff will label or otherwise inform the Board of information intended to be confidential at the time the information is provided to the Board. Staff will also inform the Board if information is confidential for a specific duration of time.

Acknowledgement of Public Records Act: Additional language is proposed to acknowledge that nothing in the Policy is intended to supersede or modify CalPERS obligations under the Public Records Act.

BENEFITS/RISKS

Adoption of the Policy will clarify the roles and responsibilities of Board Members and staff in managing access to Confidential Information.

If the Policy is not adopted, there is a risk that Board Members may not fully understand their role as fiduciaries and their duty to protect Confidential Information. Disclosure of Confidential Information could subject CalPERS to risk of legal liability and damage CalPERS relationships with members, public agencies, employers, other state agencies, and contracting vendors.

ATTACHMENTS

Attachment 1 – Board Confidentiality Policy

PETER H. MIXON
General Counsel