

**BOARD OF ADMINISTRATION
CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM
STATEMENT OF POLICY & PROCEDURES
~~CLOSED SESSIONS~~ COMPLIANCE WITH BAGLEY-KEENE OPEN MEETING ACT
~~[November, 1997]~~ [September, 2013]**

This document is effective immediately upon adoption, and ~~is adopted pursuant to Board Resolution BD-95-201 which~~ concerns the interplay of California Constitution, article XVI section 17 and the Bagley-Keene Open Meeting Act (Gov. Code sec. 11120 et seq.). ~~It augments the Board's Statement of Governance Principles and Board Resolution BD-95-201, but~~ it supersedes all other policies pertaining to closed sessions.

I. PURPOSE

This policy is adopted to set forth the circumstances under which the CalPERS Board, or any of its committees, will exercise their authority under Government Code section 11126 and California Constitution article XVI section 17 to conduct meetings that are closed to the public.

II. OBJECTIVE

In developing this policy, the Board is seeking to achieve and harmonize two objectives:

- A. To fulfill its constitutional duty to CalPERS participants to act with the care, skill, prudence, and diligence as would a prudent expert; and
- B. To fulfill its strategic goal of establishing CalPERS' identity as a trust-worthy, equitable, cost-effective, responsive, and well-managed organization.

III. POLICY & PROCEDURES

A. General

1. Unless specifically permitted under this policy, all meetings of the Board and its ~~committee~~committees are open to the public.
2. All meetings of the Board and its committees will comply with the notice and agenda provisions of Government Code sections 11125 (for 10-day notice) ~~or~~, 11125.4 (for special meetings) and 11125.5 (for emergency meetings). Notices for meetings that are closed will specifically describe the authority for the closed session.
3. Minutes of all meetings of the Board and its committees will be kept. ~~All materials~~ Materials distributed to all or ~~considered during~~ a majority of all the Board members in connection with a matter subject to discussion at an open meeting of the Board are public records, unless specifically exempt in accordance with Government Code section 11125.1. All records pertaining to closed sessions are confidential pursuant to Government Code section 11126.1 or applicable sections of the Public Records Act, unless that confidentiality is waived by the Board through the procedures contained in this document.

4. In all closed sessions, only those members of the Board's staff and other parties who are necessary to assist the Board or its committees in the decision-making process, along with necessary transcriber(s) of events, may be present.

B. Personnel

1. The Board and its committees will meet in closed session to consider the appointment, employment, performance, or dismissal of a CalPERS employee, or to hear complaints or charges brought against that employee. Consideration of an employee's performance or any compensation decisions tied to that performance fall within the scope of this section. ~~The Board or a committee is considering discipline or dismissal, the~~ employee has the right, ~~however,~~ to request a public meeting and must be given notice of this right at least 24 hours before the meeting date.
2. The Board, and any of its committees acting with final authority, will report publicly any action taken at a closed session held under this provision. This report will be given at ~~the first~~ subsequent open meeting of the Board, or its committee as applicable, that is held after the closed session is adjourned. The report will include the vote supporting the decision. All Board or committee decisions made during closed sessions under this provision must be by roll call.

C. Investments

1. The Board, through its Investment Committee, will meet in closed session to discuss investment matters, but only when a public discussion is likely to impair CalPERS' ability to achieve its investment objectives. The Board affirmatively finds that public discussion of the following matters would likely impair CalPERS' investment objectives:
 - a. ~~Decisions to approve or disapprove non-delegated real-estate transactions, or transactions involving the direct and co-investment components of the alternative investments program~~ potential investment transactions.
 - b. Activity Reports concerning the screening and review of potential investments.
 - c. Decisions to terminate the contracts of external managers or advisers, when those decisions are inherently tied to the possible liquidation of an asset being managed or held by the manager/adviser.

~~The Board affirmatively finds that public discussion of proposed investments within the partnership component of the alternative investments program would generally not likely impair CalPERS' investment objectives. However, the Board further delegates to its Chief Executive Officer the authority to schedule for closed session the partnership component of the alternative investment program when the Chief Executive Officer, in consultation with the Committee Chair, determines that public discussion would likely impair CalPERS' investment objectives. In such an event, the Chief Executive Officer will explain his/her reasoning to the Board and the Board, through its Investment Committee, will~~

~~consider whether a closed session is necessary before making any decision on the proposed partnership.~~

2. The Board, through its Investment Committee, waives the confidentiality of closed session deliberations and materials, as follows:
 - a. **Timely reporting of any action taken at a closed session held under this provision.**
 - i. For individual investment transactions, this report will be given at the first open meeting of the Investment Committee that is held after the closing of the transaction within 12 months of the closing of the transaction or following the transfer of system assets, whichever occurs first, unless the Chief Investment Officer determines that disclosure at that time would likely impair the System's investment objectives in the transaction.
 - ii. ~~For all other decisions, disclosure will be at the first open meeting of the Investment Committee that is held after the closed session is adjourned, unless the Board's Chief Investment Officer determines that disclosure at that time would likely impair the System's investment objectives. In those instances, the Chief Investment Officer will provide the Investment Committee with a monthly log of decisions not yet disclosed and the rationale for non-disclosure. The Investment Committee may direct the Chief Investment Officer to disclose the decision at an earlier date.~~
 - ii. The Chief Investment Officer will provide the Investment Committee with a monthly log of investment transactions and decisions not yet disclosed. The Investment Committee may direct the Chief Investment Officer to disclose the transaction or decision at an earlier date.
 - iii. The report will include the vote supporting the decision. All Investment Committee decisions made during closed sessions under this provision must be by roll call.
 - iv. The report will also include an executive summary of the debate and decision, providing as much information as will not impair the System's investment objectives.
 - b. ~~Delegating to the Board's Chief Executive Officer the authority~~**Authority** **to waive the confidentiality of all or part of other closed session materials.**
 - i. ~~This authority will be exercised only in response to a Public Records Act request, and after consultation with the Chief Investment Officer and General Counsel.~~
 - i. The minutes, transcripts, and any recordings of any closed session proceeding will not be disclosed except by the Board and as otherwise set forth in Government Code section 11126.1.

- ii. With respect to any material that is the subject of a confidentiality agreement, waiver will only occur in compliance with that agreement.
- iii. With respect to any material that is deemed to be material non-public information concerning a publicly traded company security, waiver will only occur in a manner that complies with the Securities Exchange Act of 1934 applicable state and federal securities laws and regulations.
- ~~iv. With respect to Activity Reports, waiver will occur 12 months after the date of the closed session.~~
- ~~v. With respect to deliberations and decisions to approve or disapprove non-delegated real-estate transactions, or transactions involving the direct and co-investment components of the alternative investments program, waiver will occur three months after the closing of the transaction, unless the Chief Executive Officer makes the determination described in paragraph (vii) below.~~
- ~~vi. With respect to those deliberations and decisions that are held in closed session concerning strategy or tactics, waiver will occur 12 months after the closed session, unless the Chief Executive Officer makes the determination described in paragraph (vii) below.~~
- ~~vii. The Chief Executive Officer may further delay the release of all or a portion of the materials for a specified time period if he or she determines in writing that confidentiality is still in the best interests of CalPERS' participants.~~
- ~~viii. The Chief Executive Officer will contemporaneously report to the Board his or her actions under this delegation.~~

D. RateHealth Contract Negotiations

- 1. The Board and its committees will meet in closed session to receive information from and give direction to those CalPERS employees who are charged with the negotiation of health carrier contracts and premium rates.
- 2. The Board, through its Pension and Health Benefits Committee, will approve in open session the rates that have been negotiated. This action will be given at the first open meeting of the Board, or Pension and Health Benefits Committee, that is held immediately following the conclusion of all negotiations.

E. Long-Term Care Plan Strategy

- 1. The Board and its committees will meet in closed session to consider matters relating to the development of rates and competitive strategy for the Long-Term Care Plan.

2. After consultation with ~~counsel~~the General Counsel, the Board, and any of its committees acting with final authority, may direct the waiver of confidentiality of any information concerning these closed session discussions.

F. Criminal Threats

1. The Board and its committees will meet in closed session, upon a two-thirds vote of the committee or Board members present at the meeting, to consider matters posing a threat or potential threat of criminal or terrorist activity against the personnel, property, buildings, facilities, or equipment, including electronic data, owned, leased, or controlled by the state body, where disclosure of these considerations could compromise or impede the safety or security of the personnel, property, buildings, facilities, or equipment, including electronic data, owned, leased, or controlled by the state body.
2. After the closed session, the committee or Board shall reconvene in open session prior to adjournment and report that a closed session was held pursuant to Government Code section 11126(c)(18)(A), the general nature of the matters considered, and whether any action was taken in closed session.
3. After the closed session, the General Counsel shall submit to the Legislative Analyst written notification stating that a closed session was held, the general reason or reasons for the closed session, the general nature of the matters considered, and whether any action was taken in closed session.

G. Litigation

1. The Board and its committees will meet in closed session to confer with, or receive advice from, legal counsel regarding pending litigation. "Pending litigation" will have the meaning provided in Government Section Code section 11126(e)(2). All other prerequisites of Government Code section 11126(e) apply to CalPERS' closed meetings under this provision (including without limitation the requirements of additional notice and supporting legal opinion).
2. After consultation with counsel, the Board, and any of its committees acting with final authority, may direct the waiver of confidentiality of any information concerning these closed session discussions.

H. Chief Executive Officer

1. The Board and its committees will meet in closed session to consider matters pertaining to the recruitment, appointment, employment, or removal of CalPERS' Chief Executive Officer. Consideration of the CEO's performance or any compensation decisions tied to that performance fall within the scope of this section.
2. The Board, and any of its committees acting with final authority, will report publicly actions taken during these closed sessions which pertain to hiring, firing, or compensation. This report will be given at ~~the first~~a subsequent open meeting of the Board, or its committee as applicable, that is held after the closed session is adjourned. The report will include the vote supporting the decision. All Board or committee decisions made during closed sessions under this provision must be by roll call.

I. Chief Investment Officer Hiring/Firing

1. The Board and its committees will meet in closed session to consider matters pertaining to the recruitment, appointment, employment, or removal of CalPERS' Chief Investment Officer. Consideration of the CIO's performance or any compensation decisions tied to that performance fall within the scope of this section.
2. The Board, and any of its committees acting with final authority, will report publicly actions taken during these closed sessions. This report will be given at the first subsequent open meeting of the Board, or its committee as applicable, that is held after the closed session is adjourned. The report will include the vote supporting the decision. All Board or committee decisions made during closed sessions under this provision must be by roll call.

~~J. Competitive Products~~

- ~~1. Pursuant to Board Resolution BD-95-201 (as revised February 1997), the Board and its committees will meet in closed session to discuss market-sensitive issues relating to the development and implementation of products, when discussion in open session could adversely affect the feasibility of implementation.~~
- ~~2. The Board, and any of its committees acting with final authority, will report publicly actions taken during these closed sessions. This report will be given at the first open meeting of the Board, or its committee as applicable, that is held after the closed session is adjourned. The report will include the vote supporting the decision. All Board or committee decisions made during closed sessions under this provision must be by roll call.~~
- ~~3. The minutes and accompanying materials will become public records 12 months from the date of the closed session, or when the Chief Executive Officer determines in writing that the material is no longer sensitive, whichever occurs first. However, if after 12 months the materials have not already been released, the Chief Executive Officer may further delay the release for a specified time period if he or she determines in writing that the material is still sensitive.~~

IV. **RESPONSIBILITIES**

- A. Except as otherwise specified within this document, CalPERS' Chief Executive Officer is responsible for implementing these policies and procedures, and for making further delegations to subordinate staff as may be necessary.