



Agenda Item 6

September 17, 2013

ITEM NAME: CalPERS Statement of Policy and Procedures – Compliance with Bagley-Keene Open Meeting Act

PROGRAM: Board Governance

ITEM TYPE: Action

RECOMMENDATION

Staff recommends the Committee approve the proposed revisions to the Board's Statement of Policy and Procedures – Closed Sessions (Attachment 1).

EXECUTIVE SUMMARY

The proposed revisions to the Board's Statement of Policy and Procedures – Closed Sessions (Policy) are recommended to rename the Policy and to update the Policy consistent with CalPERS operations and the requirements of the Bagley-Keene Open Meeting Act (Act).

STRATEGIC PLAN

This agenda item supports Goal B of the 2012-17 Strategic Plan in cultivating a high-performing, risk-intelligent and innovative organization. The Policy sets forth procedures for ensuring that meetings of the Board of Administration and its committees comply with the Act.

BACKGROUND

Meetings of the CalPERS Board of Administration are subject to the Act. Among other things, the Act requires CalPERS to provide notice of meetings of the Board and its committees and to conduct the majority of those meetings openly so that members and stakeholders may attend and comment upon the work carried out at CalPERS. The Act also provides that certain meetings may be held in closed session not open to the public.

The Board adopted the Policy in 1997. The Policy articulates the circumstances under which the Board and its committees will hold closed session meetings. It also details the procedures that will be followed for reporting actions taken in closed session and for the waiver of the confidentiality of closed session materials. A recent review of the Policy has led to the recommended revisions as set forth in Attachment 1.

ANALYSIS

The proposed revisions to the Policy are set forth in Attachment 1 in red and strikeout/underlined text. The most significant revisions to the Policy are summarized as follows:

- Renames the Policy;
- Clarifies the interplay between the Act and the Public Records Act and notes that some materials provided to the Board in connection with an open meeting may be exempt from disclosure under the law;
- Removes distinctions (not found in or required by the Act) between certain types of investment transactions (e.g., direct and co-investments vs. partnerships) so that all investment transactions are treated similarly for purposes of meeting in closed session and reporting of actions taken;
- Clarifies the procedures for waiving the confidentiality of closed session materials consistent with the requirements of the Act and places this authority with the Investment Committee alone; and
- Eliminates certain outdated or redundant provisions and makes additional clarifying and technical changes.

BUDGET AND FISCAL IMPACTS

Not applicable.

BENEFITS/RISKS

Adopting the revisions to the Policy will clarify the responsibilities of the Board and Staff under the Act and will mitigate the risk of inadvertent violations of the Act and the Policy. The revisions will also reduce the likelihood of inadvertent waiver of confidentiality of closed session materials.

The risk of not adopting the revisions is reputational. The existing Policy is confusing, outdated and includes distinctions between certain investment transactions not included in the Act. This could lead to inadvertent violations of the Policy and a perception that CalPERS is indifferent to transparency and open meetings.

ATTACHMENT

Attachment 1: Board Statement of Policies and Procedures – Closed Session, with proposed revisions in underline and strikeout format.

GINA M. RATTO
Deputy General Counsel

PETER H. MIXON
General Counsel