Investment Committee
Agenda Item 6a

February 13, 2016

Item Name: Annual Review of the Legislative and Policy Engagement Guidelines – Second Reading

Program: Legislation

Item Type: Action

Executive Summary
Following up on the CalPERS Board of Administration's (Board) discussion of the California Public Employees' Retirement System (CalPERS) Legislative and Policy Engagement Guidelines (Guidelines) at the January 2017 Board Offsite (Offsite), this agenda item requests Committee action on three questions:

(1) Should CalPERS retain the Guidelines, at least with respect to investment matters;
(2) If so, should it revise them in the manner reflected in Attachment 3; and,
(3) Should the Committee clarify that it has delegated to the Chief Executive Officer (CEO) primary responsibility for determining CalPERS' positions on federal bills.

In the event the Committee approves the continuing use of the Guidelines as to investment matters, staff seeks adoption of the proposed updates to the "Investment Guidelines" section of the Guidelines, along with conforming changes to the "Introduction" and "General Guidelines" sections. Proposed updates to the Retirement Guidelines and Health Care Guidelines will be considered for adoption this month by the Pension and Health Benefits Committee. The final, approved document would replace the existing Board-approved Guidelines.

Strategic Plan
This item supports the CalPERS 2012-17 Strategic Plan Goal C to "engage in state and national policy development to enhance the long-term sustainability and effectiveness of our programs."

Investment Beliefs
This agenda item supports and/or reflects the following CalPERS Investment Beliefs:

1. Investment Belief 2 – A long time investment horizon is a responsibility and an advantage. A long investment time horizon requires that CalPERS advocate for public policies that promote fair, orderly, and effectively regulated capital markets.

2. Investment Belief 4 – Long-term value creation requires effective management of three forms of capital: financial, physical and human. Strong governance, along with effective management of environmental and human capital factors, increases the likelihood that companies will perform over the long-term and manage risk effectively.

Background

For many years, the Guidelines have provided a policy framework for CalPERS to engage in state and federal legislative, regulatory, and policy proposals consistent with the Board's beliefs, principles, and policies. They have been developed from the previously adopted CalPERS Strategic Plan, Investment Beliefs, Pension Beliefs, Total Fund Investment Policy, and Global Governance Principles, as well as, prior state legislative and initiative policy standards, guidelines, and federal policy priorities put forth by the Board. They do not bind the Board in considering or adopting a position on any specific proposal, nor do they supersede or alter any existing policies, beliefs, or principles.

In November 2016, draft amendments to the Guidelines were on the agenda at the Investment Committee and the Pension and Health Benefits Committee. Those committees decided to put the items over until the Board had a chance to discuss whether to eliminate the Guidelines altogether. That discussion occurred at the January 2017 Offsite, but was not completed.

Two alternatives regarding the continuing use of the Guidelines were advanced at the Offsite: (1) dispense with the Guidelines in favor of relying on other Board-approved documents to guide staff and our federal representatives in evaluating and recommending positions on state and federal legislation and regulatory proceedings; and (2) continue to use and update the Guidelines as necessary. This agenda item asks the Committee to choose between these two alternatives, and if the latter alternative is adopted, to review and adopt the proposed changes to the Guidelines.

This agenda item also asks the Committee to clarify that it has (or has not) delegated to the CEO the decision whether, in any particular case of pending federal legislation, CalPERS should take a position on that legislation and if so, what that position should be. In any event, staff would continue to bring all significant state legislation to the Board for decision and would provide monthly updates on CalPERS activities related to federal legislation.

(In addition, a separate discussion at the Offsite between the Board, staff and our federal representatives identified potential issues of relevance to CalPERS' federal legislative priorities in the 115th Congress. The Board directed staff and the federal representatives to develop a list of priorities for review and approval by the Investment Committee and the Pension and Health Benefits Committee at their March meetings. That work is underway.)

Analysis

Question One: The first question for the Committee is whether it should eliminate the Guidelines with respect to investment matters in favor of relying on other Board-approved documents to guide staff and our federal representatives.

Historically, the Board has created and periodically revised the Guidelines. Their purpose is to provide staff a framework within which to work on legislation and regulations with some comfort that they are acting consistent with the Board's desires and direction. They also provide guidance to staff in preparing legislative agenda items to be brought before the Board and committees; allow staff and our federal representatives to respond to requests for letters or testimony on legislative and regulatory issues quickly, without having to bring each request to the Board; and assist staff in determining which legislative and regulatory issues need to be tracked and monitored. They are intended as a high-level summary of CalPERS' perspectives on various public policy issues affecting it and its programs. While they contain sections specific to investment, pension, and health issues, those statements are still at a relatively high level of abstraction.

In recent years, the Board has also put forward its policy positions and preferences through its adoption of a number of documents, including its Pension Beliefs (Attachment 1), its Investment Beliefs (Attachment 1), and its Global Governance Principles (Attachment 2). Those documents are more specific than the Guidelines in articulating the Board's policies and positions. The Board has also, on occasion, adopted federal priorities in the areas of health care, retirement security, and financial services policy. The question thus arises as to whether to dispose of the Guidelines in favor of these other documents.

The primary reason to dispense with the Guidelines is that other Board-approved documents like the CalPERS Strategic Plan, Investment Beliefs, Pension Beliefs, Total Fund Investment Policy, and Global Governance Principles, provide the most complete framework from which to formulate an effective and appropriate state and federal legislative and regulatory advocacy plan. In attempting to summarize and condense that framework, the Guidelines could be considered overly simplistic, inflexible to changing conditions, and potentially inaccurate. In addition, staff will be bringing forward in March a list of proposed key federal legislative priorities for the year that could partially substitute for the Guidelines.

The primary reason to retain the Guidelines is that they arguably provide more focused direction in prioritizing among numerous proposals that implicate one or more policy issues in any given legislative cycle, or that have conflicting policy implications. The Guidelines also provide an easily understandable summary of CalPERS' legislative policies and positions in one document that is used as a reference source by member and employer groups, Congress, the Legislature, Administration, and various CalPERS stakeholders.

On balance, staff recommends dispensing with the Guidelines.

Question Two: If the Committee decides to retain the Guidelines as to investment matters, it should then consider adopting the proposed updates to the "Investment Guidelines" section of the Guidelines, along with conforming changes to the "Introduction" and "General Guidelines" sections. These proposed updates are reflected in Attachment 3.

Question Three: The next question is whether the Committee should clarify that it has (or has not) delegated to the CEO the decision whether, in any particular case of pending federal legislation, CalPERS should take a position on that legislation and if so, what that position should be.

The Board's governing documents are somewhat ambiguous as to who "owns" these decisions. On the one hand, the Board Governance Policy reserves to the Board the power to "[s]et legislative priorities and approve legislative policy and legislative positions." Section V.B.8, p. 8 of 23 (Dec. 2016). On the other hand, the Board has delegated to the CEO "the authority to act finally with respect to . . . 1. Conduct and oversee the successful implementation of the Board's policies, programs, strategic plan, and enterprise business plan objectives and initiatives . . . [and] 16. Represent the System and communicate the Board's policies and positions before outside parties and organizations (including without limitation the media, other governmental entities and officials, employer and employee organizations, and contractors)." Board Delegation Resolution No. EXEC-16-01 (October 2016).

As a practical matter, bills are introduced and amended throughout the federal legislative cycle so rapidly that it would be difficult, if not impossible, to obtain Board input on all of them in a timely fashion. This operational constraint suggests that the CEO (or her delegate) should have the authority:

(1) to determine whether a given bill is consistent or inconsistent with the Board's policies, as expressed in the Pension Beliefs, etc., the importance of the bill to CalPERS, and the political implications of taking a position, and,
(2) to decide whether, based on these and other factors, to take a position and what that position should be.

Staff and/or our federal representatives would then report all such decisions taken no later than the next scheduled Board meeting. (Again, this would not pertain to state legislation; staff would still bring any significant state bill to the Board for decision.) This delegation would also apply to other federal legislative and lobbying activities, such as meetings with legislators, legislative staff, regulatory agencies, and/or other stakeholders.

Staff believes that the Board has already delegated this authority to the CEO. However, concerns have occasionally been expressed about why staff and/or our federal representatives took a position on a bill, or why they took some other specific action that could loosely be termed "lobbying" (such as authoring a letter or signing on to a third party's letter) without obtaining specific and advance Board approval. Accordingly, it would be helpful to staff and our federal representatives for the Board to clarify that it has delegated this authority to the CEO, or alternatively, to make clear that it has not delegated this authority.

Budget and Fiscal Impacts
Not applicable.

Benefits and Risks
Periodic review to ensure that the CalPERS Legislative and Policy Engagement Guidelines represent a clear and up-to-date formulation of the Board's legislative and policy priorities facilitates the design and implementation of an effective advocacy strategy in line with the Board's legislative and regulatory objectives, creates consistency in policy efforts, and assists the Board in performing its constitutional mandate.

Attachments:
Attachment 1 – CalPERS Beliefs (which include Pension Beliefs and Investment Beliefs)
Attachment 2 – CalPERS Global Governance Principles
Attachment 3 – Draft CalPERS Legislative and Policy Guidelines – Introduction, General Guidelines, Investment Guidelines, Retirement Guidelines, and Health Care Guidelines

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