



Board Governance Committee Agenda Item 5

June 19, 2017

Item Name: Proposed Revisions to Board Governance Policy Regarding Board Member E-Mail Usage and Distribution of Articles and CalPERS-Related Items to the Board

Program: Board Governance

Item Type: Action

Recommendation

Adopt the proposed revisions to the Board's Governance Policy regarding 1) Board member use of e-mail for CalPERS business and 2) the distribution of articles and CalPERS-related items from one member to the full Board.

Executive Summary

The proposed changes to the Board's Governance Policy would 1) require Board members to use an official state e-mail account for CalPERS business and 2) provide a method for one Board member to share an article or CalPERS-related item with her or his fellow Board members.

Strategic Plan

This agenda item supports Goal B of the 2012-17 Strategic Plan, which is to cultivate a high-performing, risk-intelligent, and innovative organization.

Background

At its April meeting the Committee discussed two issues relating to the usage of e-mail by Board members. In light of the California Supreme Court's recent decision¹ that records related to the public's business which reside in a public official's private e-mail account are subject to the Public Records Act, the Committee considered the merits of requiring all Board members to use a CalPERS-issued e-mail account when conducting or discussing CalPERS business through e-mail. The Committee also considered different approaches that would, consistent with the Bagley-Keene Open Meeting Act, permit one Board member to share a CalPERS-related article with other Board members.

The Committee Chair directed staff to draft proposed revisions to the Board's Governance Policy addressing both issues.

Analysis

Staff has prepared two new paragraphs in the Board's Governance Policy for the Committee's consideration (Attachment 1, pgs. 21-22).

¹ *City of San Jose v. Superior Court* (2017) 2 Cal.5th 608, 629.

Board Member Use of E-Mail for CalPERS Business

Following its discussion in April, the Committee arrived at a consensus that Board members should be required to use a CalPERS-issued e-mail account for CalPERS business, with the exception of the State Controller, State Treasurer, and Director of the Department of Human Resources, each of whom would be permitted to utilize their respective agency's official e-mail account. The policy language staff has drafted reflects this consensus and is designed to encompass any e-mail communication relating to CalPERS business, whether it would qualify as "conducting" business or simply "discussing" it. If an e-mail concerning CalPERS business is sent to a Board member through an account other than her or his official account, the policy language requires the Board member to forward that e-mail to her or his official account.

Sharing Articles and Other CalPERS-Related Items with the Full Board

After considering two different approaches that would facilitate the distribution of CalPERS-related articles from one Board member to the rest of the Board, the Committee selected the option that would allow a Board member to send such an article to the CEO, who would then send only those articles that she or he independently deemed appropriate to the full Board. The policy language staff has drafted sets forth a mandatory process a Board member must follow if she or he wishes to share an article or other item regarding a matter within the subject matter jurisdiction of CalPERS with the full Board. Under this process, the Board member would send the item in question to the CEO, who would then independently determine whether the item would contribute to the Board's understanding of a matter within the subject matter jurisdiction of CalPERS. If the CEO finds that the article would contribute to the Board's understanding, the item would then be distributed to the full Board without attribution to the originating Board member and without any commentary she or he may have included with the item.

Benefits and Risks

Requiring all Board members to use an official state e-mail account for CalPERS business will reduce the likelihood of public records residing in a Board member's private e-mail account. This will in turn protect CalPERS by enhancing its ability to comply with the Public Records Act. Not requiring the use of an official state e-mail account for CalPERS business will make compliance with the Public Records Act more difficult and could impact the privacy interests of Board members.

Requiring Board members to follow the procedure outlined above for sharing CalPERS-related articles will help ensure that Board members and CalPERS are in compliance with the Bagley-Keene Open Meeting Act and give Board members a role in ensuring that their colleagues are aware of information that may be pertinent to the Board's work. Not requiring the procedure outlined above could increase the risk that a Board member wishing to share an article would inadvertently fail to comply with Bagley-Keene and could also diminish the breadth of information available to the Board.

Attachments

Attachment 1 – Proposed Revisions to Board Governance Policy

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