



## Board Governance Committee Agenda Item 5

August 15, 2017

**Item Name:** Proposed Amendments to CEO Delegation to Provide Authority to Take Positions on Federal and State Legislation

**Program:** Board Governance

**Item Type:** Action

### **Recommendation**

Approve the proposed amendments to the Chief Executive Officer's (CEO) Delegation Resolution to grant authority in the following areas:

- Consistent with earlier action from the Board, authority to take positions on pending federal legislation; and
- Authority to take positions on pending state legislation.

### **Executive Summary**

This item analyzes the benefits and drawbacks of delegating to the CEO, the primary decision whether, in any particular case of pending state legislation, CalPERS should take a position on that legislation and if so, what its position should be. This is in response to a request for an analysis and recommendation on the subject during the State and Federal Legislation Update at the June 19th meeting of the Board. This request also follows action by the Board in February to delegate to the CEO, the authority to adopt positions on federal legislation, consistent with adopted Board Policies, Guidelines and Beliefs.

The formal implementation of these proposed and previously adopted changes requires updates to the Delegation Resolution (Attachment 1).

### **Strategic Plan**

This item supports the CalPERS 2017-22 Strategic Plan Goal to reduce complexity across the enterprise by streamlining operations to gain efficiencies, improve productivity, and reduce costs.

### **Background**

CalPERS has a long history of engagement in matters of public policy where necessary or appropriate to the fulfillment of its mission to deliver promised retirement and health benefits to our members and beneficiaries. To this end, the Board has developed and maintained its public policy goals and priorities for federal and state legislation through various documents, including, most recently, its Legislative and Policy Engagement Guidelines (Guidelines). Until recently, in order for CalPERS to take a position on a particular piece of state or federal legislation, CalPERS team members would develop analyses and draft recommendations on individual pieces of legislation for initial presentation to, and consideration by, the Board at the most appropriate

Committee venues, which would then be adopted by the full Board upon its approval of the Committee report.

At its February meetings, the Board delegated to the CEO, the primary decision whether, in any particular case of pending federal legislation, CalPERS should take a position on that legislation and if so, what its position should be. In addition, the Board provided direction that going forward, it prefers the development of positions on state and federal legislation rely on existing Board-approved policies and documents, including, but not limited to, the CalPERS Pension Beliefs, the Investment Beliefs, and the Global Governance Principles. To that end, it adopted major revisions to the Guidelines, eliminating the Investment and Retirement Guidelines, and making minor revisions to the General and Health Guidelines. It is understood to be the Board's intent to dispense with the remaining Guidelines once its Health Beliefs are adopted.

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 24 (June 2017). In addition, 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-17-01 (Attachment 1).

## **Analysis**

### *CEO Delegation of Authority to Adopt Positions on State Legislation*

As a practical matter, bills are introduced and amended throughout the state legislative cycle so rapidly that it is difficult 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 primary 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.

Team members would then report all such decisions taken no later than the next scheduled Board meeting. This delegation would also apply to other state legislative and lobbying activities, such as meetings with legislators, legislative staff, agencies, and/or other stakeholders. However, team members believe that the Board has already delegated to the CEO, this authority to work with an author to amend his or her bill consistent with CalPERS policies and beliefs, without obtaining specific and advance Board approval. In any event, the Board would continue to retain authority under its Governance Policy to identify state legislation it wishes CalPERS team members to analyze, and then present to the appropriate Committee or the full Board for consideration and adoption of a position.

Having a dual process for adopting positions on pending legislation could raise questions among individual legislators, stakeholders and potential opponents regarding CalPERS level of interest and commitment to achieving a particular policy outcome. However, CalPERS team members believe that, on balance, the benefits of having the ability to state on the legislative record that

CalPERS requests amendments or has a particular position on legislation during key points in the legislative process, far outweigh any potential confusion.

This approach has thus far proven successful during the current session of the California State Legislature, where CalPERS team members have been meeting with legislators and stakeholders on several pieces of legislation affecting CalPERS. Stakeholders have been asking CalPERS to engage early and often on these issues, so team members have communicated CalPERS positions on a few pieces of legislation that have not come before the Board. The positions taken are consistent with the Board's Policies, Guidelines and Beliefs, and have been in alignment with our stakeholders on these positions. Accordingly, it would be helpful to team members for the Board to clarify that it has delegated this authority to the CEO.

#### *Aligning the Delegation Resolution to Reflect the CEO Delegation of Authority*

As previously stated, the Board acted in February to delegate to the CEO, primary authority to take positions on pending federal legislation on behalf of CalPERS, consistent with adopted Board Policies, Guidelines and Beliefs. In order to align that action with Board Governance policies and procedures, conforming changes to the Delegation Resolution are necessary. In the event the Board acts to delegate to the CEO, primary authority to also take positions on pending state legislation, those changes must be also reflected in the Delegation Resolution.

Therefore, CalPERS team members recommend approval of the proposed revisions to the CEO Delegation Resolution by the Board Governance Committee to reflect the proposed delegation to the CEO to take positions on pending state legislation, as well as conforming changes to reflect the Board's prior delegation to the CEO to take a position on pending federal legislation, and minor technical clarification to align the CEO Delegation Resolution with current delegations of authority standards (see Attachment 3). These changes align the CEO delegation of authority with the Board's retained authority regarding adopting positions on state and federal legislation, and clarifies its application to other state legislative and lobbying activities, such as meetings with legislators, legislative staff, agencies, and/or other stakeholders.

#### **Budget and Fiscal Impacts**

Not Applicable.

#### **Benefits and Risks**

Periodic review of CalPERS legislative and regulatory engagement activities and advocacy strategies ensures 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 –Current CEO Delegation Resolution

Attachment 2 – Proposed CEO Delegation Resolution (with tracked changes)

Attachment 3 – Proposed CEO Delegation Resolution (without tracked changes)



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