

# California Secure Choice Retirement Savings Investment Board

## Governance Workshop February 1, 2018

### DRAFT AGENDA

#### I. **Introductions**

- Introductions
- Review agenda

#### II. **Governance Overview**

- Summarize initial meeting discussion
- Share examples of governance frameworks
- Review the evolution of boards
- Discuss the characteristics of each stage and relevant governance questions

#### III. **Discuss Key Governance Questions**

- Review key policy concepts
- Discuss key governance questions the board wants to address
- Address key governance questions
- Build consensus for key governance principles, policies
- Decide on next steps

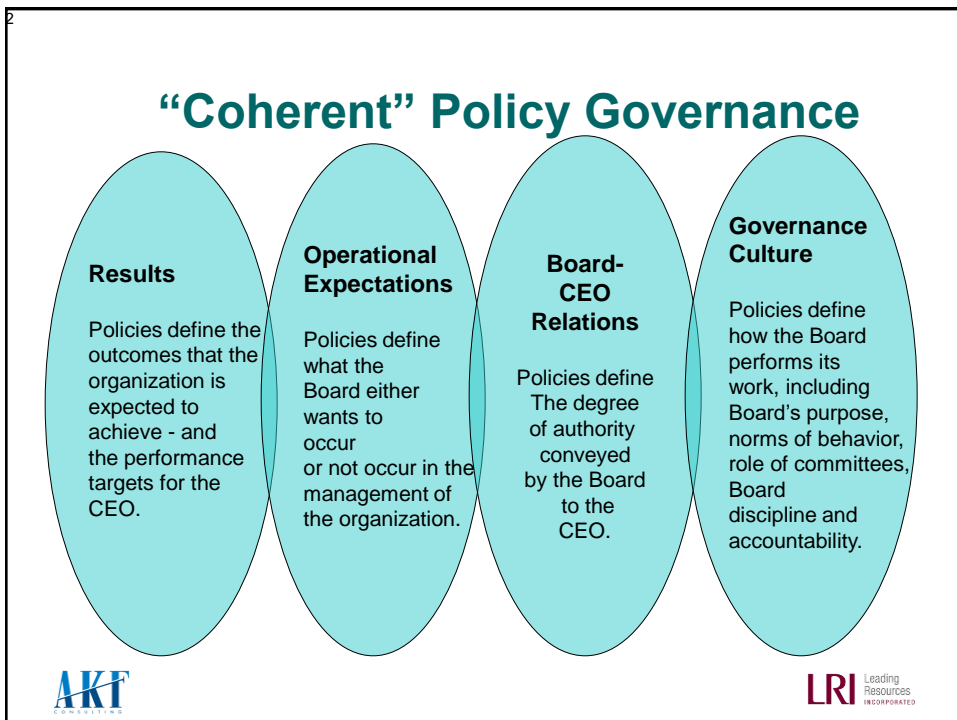
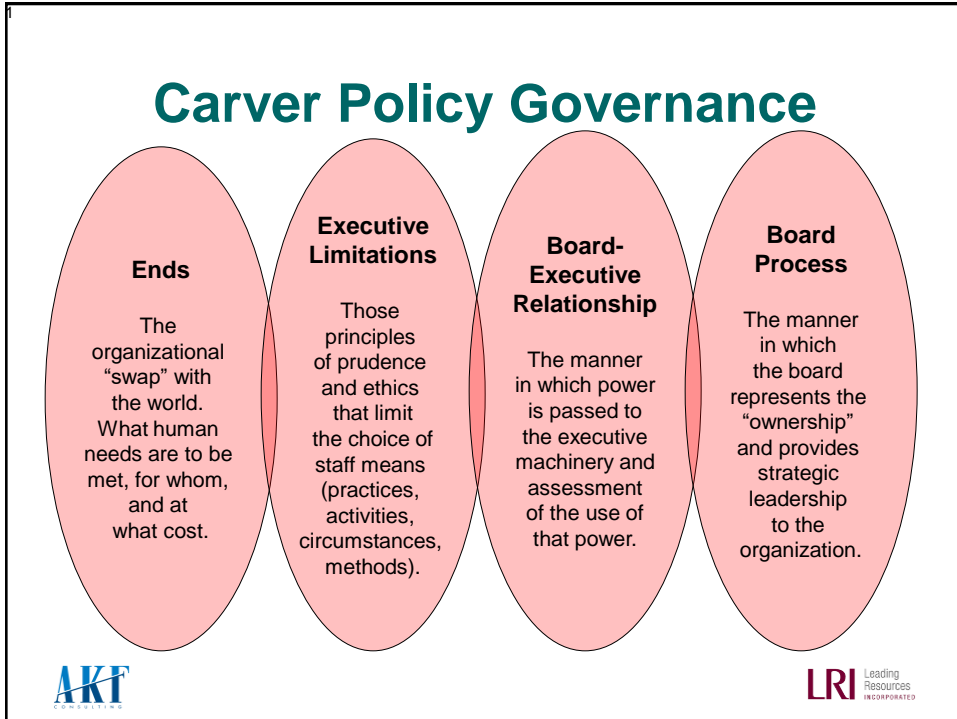
#### IV. **Conclusion**

- Gather feedback
- Define next steps

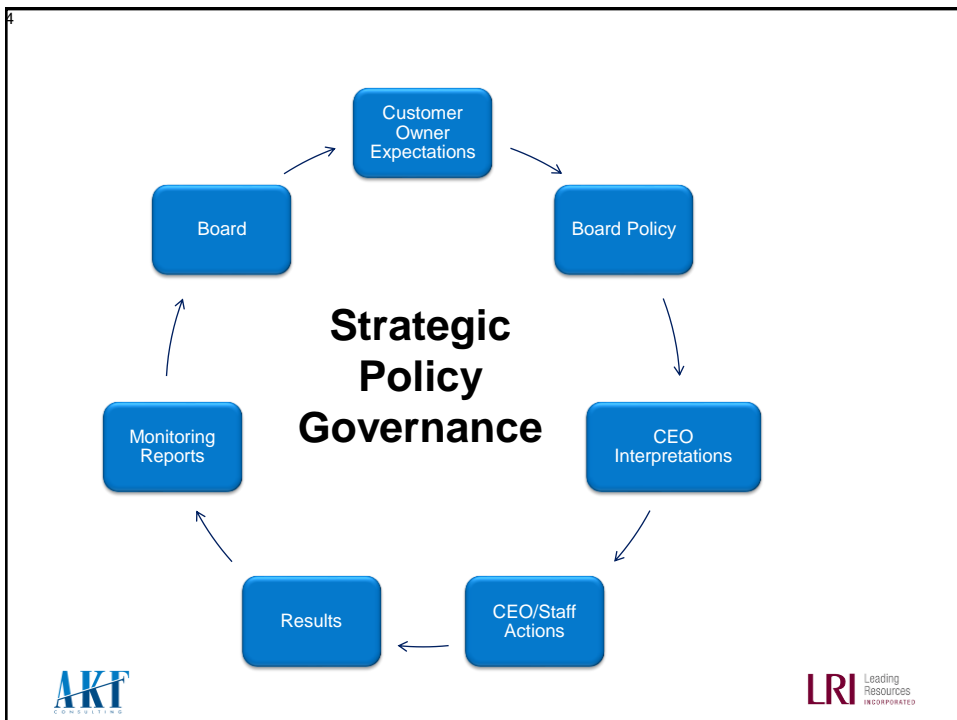
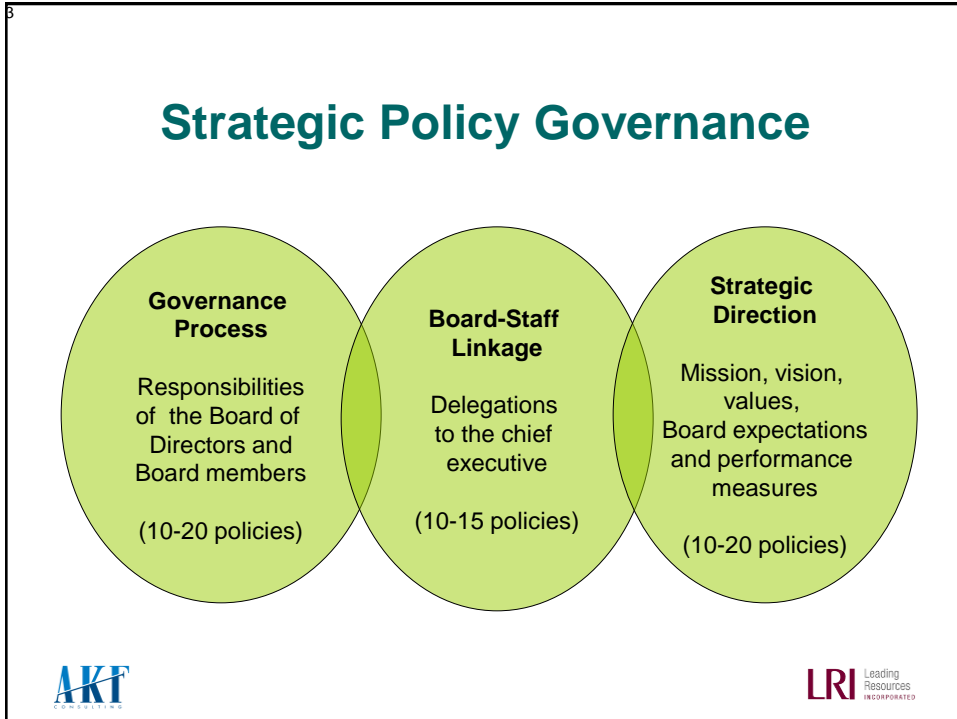
**Secure Choice Retirement Savings Investment Board**  
**January 22, 2018 Board Meeting**  
**Summary of Board Member Requests**

<b>Board Member Name</b>	<b>Nature of Request</b>
Edward De La Rosa	<ul style="list-style-type: none"> <li>▪ Establish a governance policy</li> <li>▪ Appreciate that we are a “doing Board” and have a heavy lift to get things done; stage the governance development accordingly</li> </ul>
William Sokol	<ul style="list-style-type: none"> <li>▪ Understand where we are in the evolution of Boards</li> <li>▪ Clarify transitions to subsequent stages in evolution</li> <li>▪ Learn more about each other on the Board and areas of expertise (including at the Feb. 1 meeting)</li> </ul>
Robert Purcell	<ul style="list-style-type: none"> <li>▪ Clarify transitions to subsequent stages in evolution</li> <li>▪ Obtain an overview of “everything that has happened” on the Board to date and plot on a timeline future milestones and activities</li> </ul>
Jacqueline Wong-Hernandez	<ul style="list-style-type: none"> <li>▪ Clarify transitions to subsequent stages in evolution</li> <li>▪ Clarify appropriate interactions between staff and Board</li> </ul>
Karen Greene Rose	<ul style="list-style-type: none"> <li>▪ Understand where we are in the evolution of Boards</li> <li>▪ Understand when to transition to the next stage</li> <li>▪ Further understand my fiduciary role on this Board, as distinct from the other Boards upon which I serve</li> </ul>
Yvonne Walker	<ul style="list-style-type: none"> <li>▪ Understand that we can disagree before a Board decision is made – and have different points of view – and not to take it personally.</li> <li>▪ Ensure we ask the executive director what she needs in terms of professional development support (Habit 5)</li> </ul>
Dora Westerlund	<ul style="list-style-type: none"> <li>▪ Obtain an overview of the Board’s responsibilities and Board members’ responsibilities, e.g., what can I share and not share</li> </ul>
Steve Juarez	<ul style="list-style-type: none"> <li>▪ Understand how to meet the requirements of Bagley-Keene while creating opportunities to get to know each other better.</li> <li>▪ Understand when staff should lead and when the Board should lead</li> <li>▪ Have AKF/LRI provide the “meat of the matter” in terms of governance language (e.g., financial reporting)</li> <li>▪ Solicit input from Board members this summer regarding the executive director’s performance (Walker: I hope we have structure for the evaluation)</li> <li>▪ Put more in writing</li> <li>▪ Develop a one-page timeline that includes the first meeting, key decisions, hiring of executive director, history on how legislation came about</li> </ul>
Katie Selenski (executive director)	<ul style="list-style-type: none"> <li>▪ Codify goals (Habit 2)</li> <li>▪ Codify the mission</li> <li>▪ Decide on whether to have a vision statement</li> <li>▪ Establish a high-level plan</li> <li>▪ Determine what level of financial information the Board would like to see and how often (Habit 4)</li> <li>▪ Clarity on how my performance will be evaluated (Habit 5)</li> </ul>

# Governance Frameworks



# Governance Frameworks



# THE EVOLUTION OF BOARDS OF DIRECTORS

Boards of Directors typically follow an evolutionary path as the organization matures. This tool lays out three stages of board evolution and identifies the characteristic behaviors of each stage. This tool can apply to Boards of Directors that oversee corporations, public agencies, and non-profits. Board members can use this tool to help clarify their stage of evolution and adapt their strategies accordingly.



## Stage 1: The “Doing” Board

In the early stages, board members typically handle a lot of responsibilities because there are a lot of tasks to get done and a lack of staff to do them. They raise money, manage projects, deliver products, coordinate publicity, develop the business plan, work with contractors, gather volunteers, answer telephones, and develop web sites. In short, they do anything – and everything – the organization requires.

During this time, there is the exhilaration of creating something special. The founding board members feel invigorated, challenged, and entrepreneurial. Typically, board members devote countless hours to the effort, motivated by the expectation of playing an important role in addressing a significant set of issues. They become the “core” board. During this time, board meetings are typically action oriented. There’s little time to work on the board’s fiduciary or governance role.

In sum, the board’s decisions include:

1. Raising funds
2. Developing a budget
3. Developing and implementing programs
4. Developing organizational policies
5. Hiring contractors and overseeing their work
6. Clarifying board chair and officer roles
7. Cultivating and developing the board and board members

## **Stage 2: The Transitioning Board**

As the organization stabilizes and becomes successful, its board makes key moves to stabilize its operations. It hires a CEO or executive director. Other employees join the organization. The board undertakes a more disciplined approach to its role, focusing on overseeing the organization rather than directly managing it. The board begins to distinguish between the role of the board and the role of board members. A key governance principle is established – that the board can only make decisions as a board; individual board members lack decision-making authority.

As this new sense of discipline is taking root, the board's "core" founding members experience a sense of relief that the pressure is off; at the same time, there's a feeling of loss of control for some of them. Certain board members may not make the transition successfully and may become impediments to success.

The additional decisions of the board during this stage includes:

1. Developing a strategic plan
2. Clarifying unity of control
3. Clarifying roles in speaking to media and stakeholders
4. Clarifying roles of board chair, board committees and committee chairs
5. Deciding what reports the board needs and the frequency of reporting
6. Developing codes of conduct
7. Define criteria and process for evaluating the executive director (and other direct reports).

## **Stage 3: The Governing Board**

As the company grows and becomes more successful, the board defines its governance role and responsibilities with even more precision and discipline. The board articulates policies stating that its role is to: a) set the strategic direction, b) hire and fire the chief executive, c) perform fiduciary oversight, d) establish long-term goals, and e) monitor success.

Once the board defines these specific roles, it focuses on only those things prescribed for the board to do. The board sets measurable goals and performance targets, allowing the board to monitor performance of staff. This helps align the organization and increases its effectiveness.

The decisions of the board during this stage include:

1. Clarifying the role of the board as governing body. Typically, a governing board focuses on defining overall results the organization is to achieve, not the means to achieving those results.
2. Expanding delegated authorities to professional staff.
3. Defining roles of all direct reports e.g. chief counsel, auditor etc.
4. Expanding or clarifying definitions of committee roles and roles of committee chairs.
5. Expanding the code of conduct as needed.
6. Defining the monitoring process (for monitoring goals or strategic directives established by the board) as well as other policies established by the board.

# THE EVOLUTION OF BOARDS OF DIRECTORS

## Stage 2: The Transitioning Board

The additional decisions of the board during this stage often include the following:

1. Develop a strategic plan
2. Develop and approve budgets
3. Clarify the unity of control
4. Clarify roles in speaking to media
5. Clarify roles in speaking to stakeholders
6. Decide what reports the board needs and the frequency of reporting, for example:
  - Reports from executive director e.g. financial/budget; program implementation
  - Reports from other direct reports to the board (e.g. contractors)
  - Reports from auditor(s)
7. Clarify delegations to the executive director with respect to contracts
8. Clarify transparency requirements of board meetings
  - E.g. Should meetings be audio-streamed or videoed?
  - E.g. What are rules for closed sessions?
9. Define codes of conduct for board and staff
10. Define the criteria and process for evaluating the executive director
11. Clarify the role of the board chair
12. Clarify the role of committees and committee chairs

# California Secure Choice Retirement Savings Investment Board

## Sample Policy Concepts

### 1. Develop a strategic plan

Policy concepts:

- a) The board sets goals, performance metrics, and defines guiding values or principles for the organization, in collaboration with the executive director.
- b) The board works in collaboration with the executive director in developing a strategic plan for the organization.
- c) The board approves the strategic plan for the organization.

### 2. Develop and approve budgets

Policy concepts:

- a) The board works with the executive director in the preparation of an annual budget.
- b) The board reviews and approves the annual budget for the organization.

### 3. Clarify the unity of control (and recourse for management)

Policy concepts:

Only decisions of the board acting as a body are binding on the executive director. Specifically, in or out of the board meeting:

- a) The board as a body directs the organization, not individual board members except when specifically authorized by the board to do so.
- b) Except where specifically authorized by the board, decisions or instructions of individual members of the board are not binding on the executive director.
- c) In cases where the board has provided direction on an issue through a vote, such decisions are binding on the executive director.
- d) In cases where the board has provided direction on an issue through consensus or other means, the chair is empowered to communicate the relevant direction to the executive director. If the chair communicates the consensus outside a public meeting, the executive director may request that such direction be confirmed through a formal vote of the board.
- e) In the case of individual members of the board requesting information or assistance, the executive director may refuse such requests that require, in their opinion, an inordinate amount of staff time, or funds, or are disruptive.
- f) Individual members of the board should communicate requests or suggestions to staff members or contractors via the executive director.
- g) Individual members of the board cannot give direction to persons who report directly or indirectly to the executive director.
- h) The board as a body evaluates the executive director. The board will refrain from



- evaluating, either formally or informally, any staff other than the executive director.
- i) Individual members will refrain from evaluating any staff.

#### **4. Clarify roles in speaking to media**

Policy concepts:

- a) The board chair and executive director are delegated authority by the board to speak on behalf of the board to the media. Board members shall be notified as soon as possible of all media contacts and the content of all interviews. When board members are contacted by the media, they must funnel those requests to the board chair and executive director.
- b) In their communications with the media, the board chair and executive director must reflect the decisions made by the board, not their individual opinions.

#### **5. Clarify roles in speaking to stakeholders**

Policy concepts:

- a) The board chair and executive director are delegated authority by the board to speak on behalf of the board to the Legislature or individual legislators about board matters. Board members shall be notified as soon as possible of all contacts with legislators. When board members are contacted by legislators or their staff, they must funnel those requests to the board chair and executive director.
- b) Individual board members may speak on behalf of the board to other stakeholders. Board members and the executive director shall be notified as soon as possible of all contacts with stakeholders.
- c) All those speaking on behalf of the board must make sure their statements reflect decisions made by the board, not their individual opinions.

#### **6. Decide what reports the board needs and the frequency of reporting**

Potential examples:

- a) Reports from executive director e.g. financial/budget; program implementation
- b) Reports from other direct reports to the board (e.g. contractors)
- c) Reports from auditor(s)

#### **7. Clarify delegations to the executive director with respect to contracts**

Policy concepts:

- a) The board has specific powers reserved to it under statute. For example, current language in statute states that the board shall “make and enter into contracts necessary for the administration of the trust.” The current language also says the board “shall contract with a program administrator and determine the duties of the program administrator.”
- b) The board needs to clarify in writing the delegations to the executive director.

For example:

- a) The executive director is delegated the authority to initiate and decide on contracts up to \$300,000 in value. In making contract decisions, the executive director shall use prudent judgment at all times.
- b) The executive director may:
  - i. Award and execute all contracts and written change orders or amendments thereto, of \$300,000 or less, where the concepts or allocations therefore have been approved by the board; and,
  - ii. Award and execute all contracts and written change orders or amendments thereto, of \$300,000 or less, where such contracts and written change orders or amendments thereto are for the administration of the functions of the board as identified by the executive director or are related to direct legislative mandates as identified by the board; and,
  - iii. Award and execute all interagency agreements, agreements with other governmental entities, and written changes orders or amendments thereto, where such interagency agreements and written change orders or amendments thereto are for the administration of the functions of the board, as identified by the executive director, or are related to direct legislative mandates as identified by the board.
  - iv. Prepare, conduct and evaluate all solicitations, bids, requests for proposals for procurement of goods and services, where the concepts/allocations thereof have been approved by the board consistent with the approvals required above;
  - v. Execute contracts and amendments thereto, related to board's programs, following procedures and guidelines that have been approved by the board.
  - vi. Confirm fulfillment of contracts for the purposes of concluding the contract and making final payment; where the contract requires a report with policy recommendations, staff will use these recommendations, among other things, in preparing an agenda item to be presented to the board for consideration.

Optional concepts to incorporate:

- Executive director may initiate contracts only when resources have been budgeted to do so.
- Executive director must bring options to the board to discuss before a decision is finalized (on certain types of contracts).
- Executive director must notify the board about all contracts executed on behalf of the board.

## **8. Clarify transparency requirements of board meetings**

- a) All board meetings shall be accessible to the public and available via live audio-stream. Minutes of all meetings will be posted publicly on the website.
- b) Closed sessions of the board are permissible when discussing litigation or personnel matters.
  - Note: Some boards have closed sessions on other topics e.g. investment decisions

## 9. Define codes of conduct for board and staff

Policy concepts:

- a) The board commits itself and its members to ethical, businesslike, and lawful conduct, including proper use of authority and appropriate decorum when acting as members of the board. Members of the board must avoid even the appearance of impropriety to ensure and maintain public confidence in the board. Specifically:
  - i. Members of the board shall conduct themselves in accordance with all laws.
  - ii. Members of the board shall conduct themselves with civility and respect at all times with one another, with staff, and with members of the public.
  - iii. Members will be properly prepared for board deliberations.
  - iv. Members of the board shall demonstrate loyalty to the interests of the California Secure Choice Retirement Savings Investment Board. This supersedes any conflicting loyalty such as that to advocacy or interest groups and membership on other boards or staffs. It also supersedes the personal interest of any board member acting as a consumer of the organization's activities.
  - v. Members of the board shall comply with all provisions regarding incompatible activities. Namely, they:
    - a. Shall not use the prestige or influence of the state or the appointing authority for his/her private gain or advantage or the private gain or advantage of another.
    - b. Shall not use his/her employment at the board for private gain or advantage.
    - c. Shall not solicit business from persons licensed by the board.
    - d. Shall not use state time, facilities, property, vehicles, equipment, or supplies for personal business, private gain or advantage.
    - e. Shall devote his/her full time, attention, and efforts to her/her state office or employment during his/her hours of duty.
    - f. Shall not disclose confidential information available by virtue of state employment for private gain or advantage or provide confidential information to persons to whom issuance has not been authorized.
    - g. Shall not request or accept money, or other consideration, from anyone other than the state for the performance of his/her duties as a state employee.
    - h. Shall not receive or accept, directly or indirectly, any gift, including money, or any service, gratuity, favor, entertainment, hospitality, loan, or any other thing of value from anyone who is doing or seeking to do business of any kind with the California Secure Choice Retirement Savings Investment Board, or whose activities are regulated or controlled by the California Secure Choice Retirement Savings Investment Board, under circumstances from which it could reasonably be substantiated that the gift was intended to influence the officer or employee in his or her official duties, or was intended as a reward for any official action performed by the officer or employee.
    - i. Shall not perform any act in other than his/her capacity as a state officer or employee knowing that the act may later be subject, directly or indirectly to the control, inspection, review, audit, or enforcement by the officer or employee.

- vi. Members of the board are required to make written disclosure of any ex parte communication, meaning a written or oral communication between himself or herself and a member of the public in which the communication:
  - a. Is not made on the record at a Board or committee meeting;
  - b. Concerns a matter under the Board's jurisdiction;
  - c. Is subject to a roll-call vote at a Board or committee meeting;
  - d. Is scheduled on the next or an upcoming Board or committee agenda, or pertains to a matter which the Board member knows will be scheduled on an upcoming agenda; and
  - e. Is made by a person or persons who intent to influence the vote of a Board member.
  - f. Where a written communication is made to one Board member, with photocopies to other Board members, it will be sufficient to comply with the law if one Board member discloses the communication on behalf of all the recipient members.
  - g. An oral disclosure of an ex parte communication made in a public Board meeting where the proceedings are being transcribed by a court reporter constitutes written disclosure for purposes of compliance.
  - h. If the person involved in ex parte communication with a Board member discloses the communication in accordance with the law, that disclosure constitutes sufficient disclosure under the law.
  
- vii. Members of the board may not attempt to exercise individual authority over the organization except as explicitly set forth in the board's governance policies. Board members must recognize the lack of authority vested in them as individuals in their interactions with the executive director or with staff, except where explicitly authorized by the board.
  
- viii. As required by law, members will respect the confidentiality appropriate to issues regarding personnel, proprietary matters, and attorney-client privileged communications.

## **10. Define the criteria and process for evaluating the executive director**

Policy concepts:

- a) The executive director's job performance shall be evaluated by comparing the organization's results, operations and the executive director's personal performance to the goals and policies established by the board. Specifically:
  - i. The board shall evaluate the executive director's performance on an annual basis.
  - ii. The evaluation will be primarily based on an evaluation of the organization's performance against the goals established by the board, as well as based on the executive director's personal performance.
  - iii. In advance of the evaluation, the executive director shall propose performance criteria that represent his or her reasonable interpretation of achieving the results defined by the board and the board shall decide whether to use those as the basis for the evaluation.
  - iv. The board will use data to determine the degree to which its expectations are being met.
  - v. The chair has the responsibility and authority to collect and assemble data needed to perform the evaluation of the executive director.

## **11. Clarify role of board chair**

Current language in statute:

“The Treasurer shall, on behalf of the board, appoint an executive director, who shall not be a member of the board and who shall serve at the pleasure of the board. The Treasurer shall determine the duties of the executive director and other staff as appropriate and set his or her compensation. The board may authorize the executive director to enter into contracts on behalf of the board or conduct any business necessary for the efficient operation of the board.”

Alternative policy concepts:

- a) The board determines the duties of the executive director.
- b) The executive director determines the duties of staff that report to the executive director.

## **12. Clarify role of committees and committee chairs**

Policy concepts:

- a) The board may appoint a committee of two or more of its members to advise it on any matter within the power of the board itself to perform.
- b) In cases where a committee of the board provided direction on an issue through consensus or other means, the committee chair is empowered to communicate the relevant direction to the board.

## **13. Other issues**

- a) Clarify vocabulary: What word will be used to describe the 9-member board, and what word will be used to describe the organization as a whole, i.e. the California Secure Choice Retirement Savings Investment Board?