
MAY 20, 2019

AGENDA ITEM 7
INFORMATION ITEM

CALIFORNIA SECURE CHOICE RETIREMENT SAVINGS INVESTMENT BOARD

Board Governance Policy – Legislation

Summary

The California Secure Choice Retirement Savings Investment Board (Board) will discuss draft amendments to the Board Governance Policy regarding legislation policy.

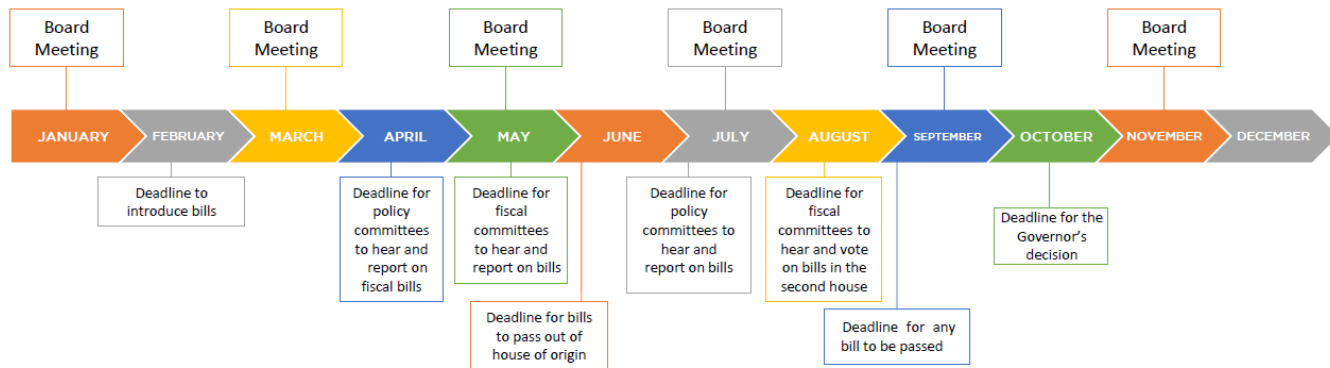
Background

The Board Governance Policy adopted February 2018 does not expressly identify Board perspective on legislation or rulemaking and it does not provide any explicit authority to staff to take actions its behalf. Such actions could include submitting formal position letters; providing bill analyses; meeting with legislative staff, committee consultants, and bill sponsors; and providing testimony at legislative hearings.

Staff have informed the Board of relevant legislation at each Board meeting and through direct communication to Board members. To date, there have been very few instances when the Board or the Chair submitted comments on a legislation or a proposed rulemaking. For each of those instances, staff received direction from the Board at a Board meeting. However, the Bagley-Keene Open Meeting Act creates some restrictions on the ability for the Board to respond to all legislation or rulemaking in a timely manner and some limited delegation of authority could allow the Board more flexibility to take positions on legislation.

State Legislative Timeline

Most substantive state legislation is introduced at some point at the start of the legislative session from December to early-February. Most bills are heard in their legislative committees by the end the spring. Bills that pass out of committee may be amended substantially in the following weeks and months and heard again at times that fall between scheduled Board meetings. Bills nearing passage are can be amended rapidly in August.



Rulemaking Timelines

Federal rulemaking typically has public comment periods ranging from 30 to 60 days, however more complex rulemakings can have longer comment periods. Depending on the length of the public comment period, the Board’s meetings schedule may not always allow for staff to obtain Board direction without calling for a special Board meeting.

Draft Language for Delegation of Authority for Positions on Legislation and Policymaking Matters

Staff drafted language for a legislative policy that would 1) compel the Executive Director to seek to obtain Board direction at full Board meetings before taking positions on legislation and policymaking matters, 2) provide the Executive Director limited authority to take positions on legislation and policymaking matters with a material impact on the operations of the Program on behalf of the Board when time does not allow the matter to be considered at a Board meeting, 3) compel the Executive Director to consult with the Board Chair when invoking this delegated authority, and 4) report to the Board on the position taken.

Such “material impacts” could include:

- Any legislation or rulemaking that would alter Title 21 of the Government Code, which includes the majority of state laws regarding the Board and Program, or any other sections of code related to the Board and Program;
- Any legislation or rulemaking that directly or indirectly refers to the operations of the Program; or
- Any legislation or rulemaking that would alter the Board’s authority or ability to fulfill its mission or strategic goals.

Attachments

- Attachment 1: Draft Amendments to Board Governance Policy (redlines)

California Secure Choice Retirement Savings Investment Board

Governance Policies

1. Role of the Board

The board has the ultimate responsibility for directing and guiding the California Secure Choice Retirement Savings Investment Board. In its role, the board focuses on the results that the organization intends to achieve, not on the day-to-day management of the organization.

2. Delegations to the Executive Director

The board delegates certain responsibilities to its executive director. Per statute, “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.” Specifically:

- a) The board communicates in writing its delegations to the executive director.
- b) At any time, the board may decide to change its delegations to the executive director, either by expanding or narrowing those delegations. When it does so, the board must communicate those changes in writing.

3. Strategic Leadership

The board has the responsibility to determine what results the organization is to achieve and communicate those in writing. Specifically:

- a) The board works in collaboration with the executive director to develop the mission, goals and measures of success for the organization.
- b) Based on the mission, goals and measures of success, the executive director develops a strategic plan for the organization.
- c) The board approves the strategic plan for the organization.
- d) The board regularly monitors the mission, goals and measures of success and provides feedback as to whether the organization is being successful in achieving the board's intended results.

4. Financial Oversight

The board has the responsibility to assure the organization's financial resources are aligned with the organization's goals. Specifically:

- a) The board works in collaboration with the executive director in the preparation of broad budget concepts annually.
- b) The board reviews and approves the annual budget for the organization, within the confines of the State Budget process.

5. Program Administration

The board has the responsibility to assure the organization delivers its programs effectively and efficiently. Specifically:

- a) The board works in collaboration with the executive director to hire a program administrator.
- b) The board regularly reviews the administration of the program and makes decisions how to improve, as needed.

6. Unity of Control

The board as a body directs the organization. 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.

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

- a) In cases where the board has provided direction on an issue through a vote, such decisions are binding on the executive director.
- 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 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.
- d) In the case of individual members of the board requesting information or assistance, the executive director may refuse such requests that require, in his or her opinion, an inordinate amount of staff time, or funds, or are disruptive.
- e) Individual members of the board should communicate requests or suggestions to staff members or contractors via the executive director.
- f) Individual members of the board cannot give direction to persons who report directly or indirectly to the executive director.
- g) The board as a body evaluates the executive director.
- h) 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.

7. Executive Director's Reports to the Board

It is the responsibility of the executive director to provide regular reports to the board on the following matters (and frequency):

- a) Strategic plan updates (quarterly)
- b) Financial updates (monthly)
- c) Program implementation updates (monthly)
- d) Reports on program-related risk factors (quarterly)
- e) Reports regarding new contracts or changes in contracts (monthly)

- f) Reports from major contractors (monthly)
- g) Communications to the media or to stakeholder groups (monthly)
- h) Reports from auditor (annually)

8. Transparency of Board Meetings

The board makes its decision-making processes as transparent as possible to the public. Specifically:

- a) All board meetings are accessible to the public, including via live audio access.
- b) Minutes of all board meetings are posted publicly on the website.
- c) Closed sessions of the board are permissible when discussing litigation or personnel matters, or as otherwise allowed by state law.

9. Board Member Code of Conduct

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:

- a) Members of the board shall conduct themselves in accordance with all laws.
- b) 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.
- c) Members will be properly prepared for board deliberations.
- d) When serving in a board capacity, 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.
- e) 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.
- f) As required by law, members will respect the confidentiality appropriate to issues regarding personnel, proprietary matters, and attorney-client privileged communications.
- g) Members of the board shall comply with all provisions regarding incompatible activities. Namely, they:
 - i. 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.
 - ii. Shall not use his/her employment at the board for private gain or advantage.
 - iii. Shall not solicit business from persons licensed by the board.
 - iv. Shall not use state time, facilities, property, vehicles, equipment, or supplies for personal business, private gain or advantage.
 - v. Shall devote his/her full time, attention, and efforts to her/her state office or employment during his/her hours of duty.
 - vi. 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.
 - vii. 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.

- viii. 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.
- ix. 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.

10. Communications with Media

The board chair and executive director are delegated authority by the board to speak on behalf of the board to the media. Specifically:

- a) When board members, members of the staff, or contractors are asked by the media to comment on behalf of the board, they must funnel those requests to the board chair and executive director.
- b) Board members shall be notified as soon as possible of all media contacts and the content of all interviews.
- c) In their communications with the media about the organization, the board chair and executive director must clearly state the decisions made by the board.
- d) Board members are free to provide their individual opinions to the media. However, they must make it clear that they are speaking as individuals, not in their capacity as board members.

11. Communications with Stakeholders

Individual board members and executive director are delegated authority by the board to speak on behalf of the board to stakeholder groups and individual stakeholders. The term “stakeholder groups” is intended to include all groups and associations external to the organization, including the Legislature and individual legislators. The term “individual stakeholders” is intended to include individuals who do not officially represent an outside group or association. Specifically:

- a) Individual board members may speak on behalf of the board to stakeholder groups and individual stakeholders.
- b) When representing decisions of the board, individual board members must clearly state the decisions of the board.
- c) Individual board members are free to provide their individual opinions to stakeholders. However, they must make it clear that they are speaking as individuals, not in their capacity as board members.
- d) When board members are contacted by stakeholder groups, they must inform the board chair and executive director.

12. Evaluating the Executive Director

The executive director's job performance shall be evaluated by comparing the organization's results, operations and the executive director's performance to the goals and policies established by the board. Specifically:

- a) The board shall evaluate the executive director's performance on an annual basis.
- b) 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 performance as a leader.
- c) 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.
- d) The board will use data to determine the degree to which its expectations are being met.
- e) The chair has the responsibility and authority to collect and assemble data needed to perform the evaluation of the executive director.

13. Role of Board Chair

Per statute, "the Treasurer shall serve as chair of the board." Also, per 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." Specifically:

- a) The chair assures the orderly and fair conduct of board meetings.
- b) The chair assures the decisions of the board are carried out by the executive director and by contractors who report to the board.
- c) Notwithstanding the language above, the executive director determines the duties of staff that report to the executive director.

14. Role of Committees

Both the board and the executive director may form committees. Specifically:

- 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. These may be either standing or ad hoc committees.
- 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.
- c) The executive director may appoint committees. No more than two board members may serve on a committee appointed by the executive director.

15. Delegations to the Executive Director with Respect to Purchases and Contracts

The executive director is delegated the authority to initiate and decide on purchases and contracts up to \$300,000 in value. In making purchasing and contracting decisions, the executive director shall use prudent judgment.

Under this delegation, the executive director is authorized to:

- a) 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.
- b) 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.
- c) 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.
- d) 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.
- e) Execute contracts and amendments thereto, related to board's programs, following procedures and guidelines that have been approved by the board.
- f) Make other purchases related to the board's programs, such as for supplies, equipment, travel, training and related services.
- g) 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.
- h) The executive director must notify the board about all contracts executed on behalf of the board.

16. Delegations to the Executive Director with Respect to Legislation and Policymaking

The executive director is delegated the authority to take positions on behalf of the board on any legislation or policymaking that impacts, or could impact, either the operations of the CalSavers Retirement Savings Program or the powers and authority delegated to the California Secure Choice Retirement Savings Investment Board.

The delegated authority shall only be invoked when there is insufficient time for a full consideration by the board at a public meeting. Whenever the delegated authority is invoked, the executive director shall consult with the board chair and report to the board on the position taken.