



Proposed Revisions to Investment Policy No. 007

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Agenda

- **Limitation Background**
- **Subject Matter Jurisdiction**
- **Board Governance**
- **Recommended Policy Revisions**



San Bernardino County Employees'
Retirement Association

Existing Due Diligence Limitation

- Investment Policy No. 007 historically limited due diligence participation to two (2) Investment Committee members.
- Limitation was adopted to ensure compliance with the Ralph M. Brown Act.
- Policy was based on the view that due diligence fell within the subject matter jurisdiction of the Investment Committee.
- As a result, attendance by more than two (2) Investment Committee members could constitute a Brown Act meeting.

Brown Act Framework

- Standing committees of the Board are legislative bodies under the Brown Act
- SBCERA Board standing committee (By-Laws)
 - Executive committee
 - Administrative committee
 - Audit committee
 - Investment committee
- Any discussion of matters within a committee's subject matter jurisdiction must be properly agendized for Brown Act purposes
- A majority of committee members may not attend non-agendized meetings on matters within that jurisdiction

Governance Analysis

- While the Board may establish standing committees to assist with analysis and recommendations, committees do not possess independent authority nor may replace the fiduciary responsibility of the full Board.
- Due diligence would be characterized as a Board-level fiduciary function.
- Due diligence supports the Board's constitutional and statutory duty of prudence.
- This represents a modification in subject matter jurisdiction analysis, not a change in Brown Act law.
- Due diligence within the subject matter jurisdiction of the full board.

Board's Fiduciary Authority

Article XVI, section 17 of the California Constitution vests retirement boards with plenary authority and fiduciary responsibility over public pension systems, including:

- The sole and exclusive fiduciary responsibility over the assets of the public pension or retirement system, and
- The duty to administer the system for the exclusive purpose of providing benefits to participants and their beneficiary and defraying reasonable expenses administering the system.

Authority is exercised by the Board as a body and is not delegated to committees.

CERL Statutory Authority

Government Code section 31595 provides that the Board:

Shall have the exclusive control of the administration and investment of the retirement fund.

Due Diligence as a Board Function

- Due diligence is an important component of the Board's constitutional and statutory duty of prudence. (Fiduciary Duty)
- Activities such as on-site-visits, meetings with investment managers, and evaluation of operational, governance, and risk controls are undertaken to inform the full Board's investment decisions and ongoing oversight responsibilities.
- Individual trustees retain fiduciary responsibility regardless of committee assignment.
- The Board retains ultimate authority and responsibility for fund administration and investment oversight.

Governance Implications

Subject Matter Jurisdiction

- Investment due diligence is a Board-level fiduciary function, grounded in the Board's constitutional and statutory authority.
- Due diligence is undertaken to inform the full Board's investment decisions and oversight responsibilities, not solely to support committee recommendations.

Policy Alignment

- Investment Policy No. 007 is being revised to reflect that due diligence authority resides with the Board, rather than being treated as within the exclusive subject matter jurisdiction of the Investment Committee.
- As a result, participation in due diligence should no longer be limited by committee assignment.

Trustee Participation

- Trustees should participate in due diligence consistent with their individual fiduciary obligations, regardless of committee membership.

Governance Implications

Brown Act Requirements:

- The Ralph M. Brown Act has not changed and continues to apply fully to the Board and all standing committees.
- Any meeting involving discussion of matters within a committee's subject matter jurisdiction must still be properly agendized and conducted in compliance with the Brown Act.

Committee Status Under the Brown Act:

- SBCERA standing committees remain legislative bodies subject to the Brown Act.
- The change in policy does not create an exception to open meeting or noticing requirements.

Governance Structure:

- Committees continue to serve an advisory role.
- The Board retains exclusive fiduciary authority over administration and investment of the retirement fund, as it always has.

Proposed Revisions

- Remove restriction limiting due diligence participation to two (2) Investment Committee members
- Authorize participation by up to four (4) Board members
- Participation not limited by committee assignment