

**GUIDE TO  
THE BAGLEY-KEENE OPEN MEETING ACT  
May 2017**



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# **GUIDE TO THE BAGLEY-KEENE OPEN MEETING ACT**

## **(Includes Amendments through January 1, 2017)**

This guide is an update on the provisions of the public meetings law governing state entities, officially called the Bagley-Keene Open Meeting Act. (Government Code sections 11120 - 11132). The Open Meeting Act closely parallels the Ralph M. Brown Act, which governs meetings of local government agencies. This guide includes all statutory changes through January 1, 2017. All statutory references are to the Government Code.

### **I. PUBLIC POLICY TO CONDUCT PEOPLE'S BUSINESS OPENLY**

When the Legislature enacted the Bagley-Keene Act, it imposed a value judgment on the governmental process. In effect, the Legislature said that when a body sits down to develop its consensus, there needs to be a seat at the table reserved for the public. (§ 11120) By reserving this place for the public, the Legislature has provided the public with the ability to monitor and participate in the decision-making process. If the body were permitted to meet in secret, the public's role in the decision-making process would be negated. Therefore, absent a specific reason to keep the public out of the meeting, the public should be allowed to monitor and participate in the decision-making process.

Each board has essentially three duties under the Open Meeting Act. First, to give adequate notice of meetings to be held; second, to provide an opportunity for public comment; and third, to conduct such meetings in open session, except where a closed session is specifically authorized.

#### Bodies Covered by the Act

There is a two-part test for determining whether a body is covered by the Act (§11121(a)):

First, the Act covers multimember bodies. A multimember body is two or more people. Examples include: state boards, advisory boards, commissions, committees, panels, and councils. Second, the body must be created by statute or required by law to conduct official meetings. If a body is created by statute, it is covered by the Act regardless of whether it is decision-making or advisory.

In relation to CDFA, the Act covers commissions, councils, advisory committees, and technical and scientific advisory committees in addition to boards. The term "board" will be used in this document to represent all covered entities.



### Advisory Bodies

There are two types of advisory boards governed by the Act: (1) those created by the Legislature and (2) those having three or more members that are created by formal action of another body. (§11121(c)) If an advisory body created by a formal action of another body has only two members, it is not covered by the Bagley-Keene Act. Accordingly, that body can do its business without worrying about the notice and open meeting requirements of the Act. However, if it consists of three or more people, then it would qualify as an advisory committee subject to the requirements of the Act.

If a body authorizes or directs an individual to create a new body, that body is deemed to have been created by formal actions of the parent body even if the individual makes all decisions regarding composition of the committee. The same result applies where the individual states an intention to create an advisory body but seeks approval or ratification of that decision by the body.

Finally, the body will probably be deemed to have acted by formal action whenever the chair of the body, acting in his or her official capacity, creates an advisory committee. Ultimately, unless the advisory committee is created by staff or an individual board member, independent of the body's authorization or desires, it probably should be viewed as having been created by formal action of the body.

### Delegated Body

A delegated body is a committee that exercises some power that has been delegated to it by another body. If the body has been delegated the power to act, it is a delegated committee. (§11121(b)) A classic example is the executive committee that is given authority to act on behalf of the entire body between meetings. Such executive committees are delegated committees and are covered by the requirements of the Act.

There is no specific size requirement for the delegated body except that it must be comprised of multiple members. Thus, a single individual is not a delegated body.

### Body Determined by Membership

The term "board member," whenever referenced in this Guide, applies to members of Boards, Committees, Subcommittees, and Task Force. In relation to CDFA, the Act covers Marketing Order advisory boards, commissions, and councils; program advisory boards and committees and technical and scientific advisory committees created in statutes, and District Agricultural Association boards.

Under this provision, a body becomes a state body when a member of a state body, in his or her official capacity, serves as a representative on another body, either public or private, which is funded in whole or in part by the representative's state body. (§11121(d)) It does not come up often, but the Act should be consulted whenever a member of one body sits as a representative on another body.

### Members-To-Be

The Act applies to new members at the time of their election or appointment, even if they have not yet started to serve. (§11121.95) The purpose of this provision is to prevent newly appointed members from meeting secretly among themselves or with holdover members of a body in sufficient numbers so as to constitute a quorum. The Act also requires bodies to provide their new members with a copy of the Act. (§11121.9) This Guide may be used to satisfy that requirement.

## **II. MEETINGS**

### **A. Definition of a "Meeting"**

"Meeting" is defined in the Act as including "any congregation of a majority of the members of a state body at the same time and place to hear, discuss, or deliberate upon any item that is within the subject matter jurisdiction of the state body to which it pertains." (§11122.5(a))

If a majority of the members gather at an event to discuss or receive information within the body's jurisdiction, even if the event is sponsored or organized by another entity, the event and associated materials should be noticed as a meeting.

### **B. Serial Meeting**

A majority of the members of a state body may not use direct communications or a series of communications (serial meeting) of any kind, directly or through personal intermediaries, or technological devices (such as e-mails) to discuss, deliberate, or take action on any item of business that is within the subject matter of the state body. (§11122.5(b))

### **C. Exemptions from Definition of Meeting**

Not all gatherings of a majority of members of a state body at a single location constitute a meeting. The Act does not apply to the following situations, provided that a majority of the members do not discuss among themselves, business within the jurisdiction of the state body. (§11122.5(c))

- Individual contacts or conversations between a member of a state body and any other person. (§11122.5(c)(1))
- Attendance by a majority of members at a conference or similar gathering open to the public that involves a discussion of issues of general interest to the public or to public agencies of the type represented by the state body. (§11122.5(c)(2))
- Attendance by a majority of members at an open and publicized meeting organized to address a topic outside the jurisdiction of the state body. (§11122.5(c)(3))
- Attendance by a majority of members at an open and noticed meeting of another state body or of a legislative body of a local agency. (§11122.5(c)(4))
- Attendance by a majority of members at a purely social or ceremonial occasion. (§11122.5(c)(5)) However, if the event is funded by the state body and a majority of members will be in attendance, it would constitute a meeting and all notice requirements apply.
- Attendance by a majority of members at an open and noticed meeting of a standing committee of that body provided the members of the body who are not members of the committee attend only as observers. (§11122.5(c)(6))

An employee or official may also engage in separate communications outside of a noticed meeting with members of the legislature to answer questions or provide information about a matter within the agency's subject matter jurisdiction – with the limitation that the person cannot communicate the comments or position of any other member.

When determining when a gathering constitutes a meeting, ask the following questions. If the answer to any of the questions is “yes,” then the gathering is a meeting for Bagley-Keene purposes.

- Will a majority of the members be in attendance?
- Is the state body sponsoring the event?
- Will a topic within the body's subject matter jurisdiction be discussed?
- Will a member of the body be discussing an item on a current, noticed agenda?

## **D. Board and Committee Meetings**

There are two basic types of meetings held by state entities. The first type is a board meeting, where a quorum of the members of the board is present. The second type is a committee meeting consisting of at least three board members but less than a quorum of the members of the full board. Subcommittee, task force, and ad hoc committee meetings are variations of committee meetings.

Subcommittees may be appointed to study and report back to a committee or the board on a particular issue or issues. If the subcommittee consists of three or more persons, the same provisions apply to its meetings as apply to meetings of committees.

### **1. Quorum Defined**

A “quorum” is commonly defined as “the minimum number of members (usually a majority of all the members) who must be present for a deliberative assembly to legally transact business.” (94 Ops.Cal.Atty.Gen. 100 (2011))

The quorum of a board may already be determined by the legislature in its enabling statute, and if not, then in its bylaws. If the quorum of a board is not established by its statute or bylaws, then the quorum is “a majority of the designated membership.” Simply, one more than half of the total number of member seats, *including vacant seats*. Therefore, if a board is fully seated at nine members, then a quorum is five members. (94 Ops.Cal.Atty.Gen. 100)

If the board is authorized by its enabling statute to adopt bylaws, a quorum may be set as the majority of the designated membership or more. A quorum can never be established at less than the majority of the designated membership. (94 Ops.Cal.Atty.Gen. 100)

A board cannot transact business (deliberate and vote) in the absence of a quorum, except to adjourn or to handle limited non-substantive matters. If a quorum is set as a simple majority (or more) of a board’s members and a quorum is achieved, then the majority of the quorum may act for the board. (94 Ops.Cal.Atty.Gen. 100)

If a quorum cannot be achieved because enough members are disqualified and must abstain from voting (usually due to conflicts of interest), contact the CDFA Legal Office for advice.

### **2. Task Force**

Board chairpersons may occasionally appoint a task force to study and report on a particular issue. One or two board members typically serve as task force members,

along with a number of other non-board members. When this is the case, the same rules that apply to committee meetings apply to task force meetings. Such a formally appointed task force falls under the definition of “state body in Section 11121(c).” However, if only the board members themselves meet and are less than three in number, it is considered an ad hoc committee and meeting requirements do not apply.

A task force created by the Secretary or her designee is not subject to Bagley-Keene.

### **3. Committees with Less than a Quorum / Ad Hoc Committees**

Committee and subcommittee meetings, where less than a quorum of the board is present, are also required to be noticed and open to the public. The only exception is for a committee that consists of two persons at a maximum, commonly referred to as an “ad hoc committee,” and does not exercise any authority of its state body.

**NOTE: it is the number of persons on the committee not the number of board members that is determinative.**

When an ad hoc committee meeting is not noticed, other members of the board should not attend the meeting, as such attendance would clearly be perceived as an Open Meeting Act violation. Board staff may attend an ad hoc committee meeting. Findings or results of the ad hoc committee should be publicly reported at the next meeting of the Board.

#### **E. Restriction on Attendance at Committee Meetings**

A majority of members may attend an open and noticed meeting of a standing committee of the board, provided the members of the board who are not members of the committee attend only as observers. (§11122.5(c)(6)) The Attorney General concluded that “[m]embers of the legislative body of a local public agency may not ask questions or make statements while attending a meeting of a standing committee of the legislative body ‘as observers.’” The opinion further concluded that such members of the legislative body may not sit on the dais with the committee. (81 Ops.Cal.Atty.Gen.156)

If you have advance notice that a non-committee board member will be in attendance, the agenda of the committee meeting should contain a statement to the effect that “members of the board who are not members of this committee may be attending the meeting only as observers.” It is strongly recommended that an announcement be made at the beginning of the meeting that the non-committee board members are in attendance only as observers and not participants.

### **III. NOTICE & OTHER REQUIREMENTS**

Boards and committees may hold several types of meetings, including a regularly scheduled meeting, a “special” meeting, or an “emergency” meeting. (§11125.5)

#### **A. Regularly Scheduled Meetings**

##### **1. Who May Hold a Regularly Scheduled Meeting**

A board, committee, subcommittee, or task force may hold a regularly scheduled meeting. These are meetings that are scheduled throughout the year to conduct the usual and customary business of the board. Such meetings may generally be called by the chairperson, or by a majority of the body. However, you must refer to your particular originating act or governing document, which may contain different provisions as to who may call a meeting.

##### **2. Purposes for Which the Meeting May be Held**

These meetings are to conduct the usual and customary business of the board, or the business of a committee, subcommittee or task force as directed by the board. The subject matter of any meeting is dictated by the authority of the board as found in the board's originating act or governing document.

##### **3. Notice Requirements for a Regularly Scheduled Meeting**

A board is required to give a least 10 calendar day's written notice of each meeting to be held (§11125(a)) and to give a person requesting notice the option of receiving the notice by regular mail, email or both. The board must comply with that requester's choice for receiving notice of meetings to the best of its ability. (Business and Professions Code §101.7)

The notice must include the name, address, and telephone number of a person who can provide further information prior to the meeting and must contain the website address where the notice can be accessed. The notice must also be posted on the Internet at least 10 calendar days before the meeting. In addition, if a meeting is to be offered via teleconference, the meeting notice shall include a statement of the board's intent to web cast the meeting.

#### **Compliance with the Americans with Disabilities Act**

Upon request by a person with a disability, a board must make a meeting notice available

in appropriate alternate formats.

The notice must also include information that would enable a person with a disability to know how, to whom, and by when a request may be made for any disability-related modification or accommodation, including auxiliary aids or services. (§11125(f)) We suggest the following as standard language in an appropriate font size:

The meeting is accessible to the physically disabled. A person who needs a disability-related accommodation or modification in order to participate in the meeting may make a request by contacting [name] at [phone number] or sending a written request to that person at the Board [mailing address]. Providing your request at least five (5) business days before the meeting will help ensure availability of the requested accommodation.

### Agendas

The notice of each meeting must include an agenda that identifies all items of business to be transacted or discussed. No item shall be added to the agenda subsequent to the provision of the notice, unless, the amended notice is distributed and posted on the Internet at least 10 calendar days prior to the meeting. (§11125(b)).

All items to be discussed or transacted must be described on the agenda with sufficient specificity to enable the public to understand what will be transacted or discussed. Additionally, agenda headings or items should indicate whether those items are for "Informational Purposes Only" or are "Discussion/Action Items." "Action items" are those items of business on which the board will make a collective decision or take an actual vote. (§ 11122)

General agenda items such as "New Business," "Old Business," "Executive Officer's Report," "Committee Reports," "President's Report," "Closed Session," "Miscellaneous," "Other," etc., without specifying the particular matters thereunder, are not sufficient to provide notice to the public. The Office of the Attorney General has opined that:

"... the purpose of subdivision (b) [of Government Code Section 11125] is to provide advance information to interested members of the public concerning the state bodies anticipated business in order that they may attend the meeting or take whatever other action they deem appropriate under the circumstances." "We believe that Section 11125 was and is intended to nullify the need for . . . guesswork or further inquiry on the part of the interested public." (67 Ops.Cal.Atty.Gen.85, 87)

**NOTE: If the regularly scheduled meeting will have a closed session agenda item or items, or be held by teleconference, please refer to the discussion of additional requirements under those headings, below.**

The notice and the agenda must be provided to any person who requests it. A member of the public may request notice for a specific meeting, for all meetings at which a particular subject will be discussed or action taken thereon, or for all meetings of the agency. Mailing lists of persons who desire to be notified of more than one meeting must be maintained pursuant to Section 14911, which provides:

"Whenever any state agency maintains a mailing list of public officials or other persons to whom publications or other printed matter is sent without charge, the state agency shall correct its mailing list and verify its accuracy at least once each year. This shall be done by addressing an appropriate postcard or letter to each person on the mailing list. The name of any person who does not respond to such letter or postcard, or who indicates that he does not desire to receive such publications or printed matter, shall be removed from the mailing lists. The response of those desiring to be on the mailing list shall be retained by these agencies for one year."

Materials should be provided in the manner requested whenever possible, i.e. paper copies versus internet.

#### Items of Business Not on the Agenda

Items not included on the agenda may not be deliberated by the board, even if no action is to be taken.

Boards should include an item on their agendas for "Public Comment on Matters Not on the Agenda." This allows persons in attendance an opportunity to raise any issues not on the agenda, but which may be appropriate for future board discussion. Matters raised under this agenda item should be discussed only to the extent necessary to determine whether they should be made an agenda item at a future meeting. (§11125.7(a)) Board chairs should follow up with the CEO to ensure that those items designated for a future meeting are placed on the agenda accordingly.

Consider including an item on the agenda for "Board Recommendations for Future Agenda Items." This allows all board members an opportunity to request specific agenda items for a meeting. Again, these items should be discussed only to the extent necessary to determine whether they should be included as agenda items for a future meeting.



If a situation that requires immediate attention arises after an agenda has been posted and within the ten day notice period, during the meeting a board may vote to determine whether that item requires “immediate action.” (§ 11125.3(a)(2)) The determination is made by two-thirds vote or if less than two-thirds of the members are present, by unanimous vote. If the board determines there is a need to take immediate action, then it must still comply with a 48-hour notice requirement to all members, media, and posted on the Internet. (§ 11125.3(b)) This means that the earliest the board may meet to take action on the item is in 48 hours. Therefore, this type of meeting should be reserved for circumstances where the board cannot wait 10 more days to meet again because immediate action must be taken.

An example of when this is appropriate is if damage is occurring, and will continue to occur, to property under a board’s jurisdiction, and a board is required to authorize remedial action. If the board waits 10 days, more damage to the property would occur with greater financial consequence. The board may determine by vote that this is a situation that requires “immediate action” and that it must meet again in 48 hours to consider and vote on the remedial action. Please consult with the CDFA Legal Office for assistance in determining whether the situation requires “immediate action.”

## **B. “Special” Meetings**

### **1. Purposes for Which a Special Meeting May be Held**

A special meeting can be called at any time by the presiding officer or a majority of the members of the board, only if the 10-day notice requirements “would impose a substantial hardship on the state body or where immediate action is required to protect the public interest.” (§11125.4(a)) A board considering a special meeting should consult with the CDFA Legal Office to make this determination as it involves a legal analysis of the facts and purpose. A special meeting may be called to consider the following matters:

- (1) ‘Pending litigation’ as defined in Section 11126(e),
- (2) Proposed legislation,
- (3) The issuance of a legal opinion,
- (4) Disciplinary action involving a state officer or employee,
- (5) The purchase, sale, exchange, or lease of real property,
- (6) License examinations and applications,
- (7) Action on a loan or grant provided pursuant to the Health and Safety Code section 50000 *et seq.*,
- (8) A confidential final draft audit report as permitted by Section 11126.2, or
- (9) To appoint an interim executive officer.

## **2. Notice Requirements for a Special Meeting**

Notice of the special meeting must be provided to each member of the state agency and to persons who have requested notice of the agency's meetings as soon as practicable after the decision to hold the meeting is made. Notice to members, newspapers of general circulation, and radio or television stations must be received at least 48 hours in advance of the meeting. Notice to newspapers, radio and television stations are satisfied by providing notice to all national press wire services. Notices to the general public may be given via appropriate electronic bulletin boards or other appropriate mechanisms. (§11125.4(b)) The notice must also be posted on the Internet at least 48 hours in advance of the meeting.

The notice must specify the time and place of the special meeting and the business to be transacted. In essence, an agenda would be prepared. No business other than that noticed may be transacted. Notice is required even if no action is subsequently taken at the meeting. (§11125.4(b)) And, the notice must contain the Website address where the notice and agenda may be accessed on the Internet.

**NOTE: If the special meeting will have a closed session agenda item or items, or be held by teleconference, please refer to the discussion of additional requirements under those headings, below.**

## **3. Specific Requirements During Special Meetings**

Prior to the commencement of a special meeting, the board must make a finding in open session that providing a 10-day notice of the meeting would pose a substantial hardship on the board, or that immediate action is required to protect the public interest. Specific facts constituting the hardship or the need for immediate action must be articulated. Boards should consult with the CDFA Legal Office in making this determination. This finding must be adopted by a two-thirds (2/3) vote of the board members present, or if less than two thirds of the members are present, by a unanimous vote of the members present. Failure to adopt the finding terminates the meeting. The board's finding must be made available on the Internet. (§11125.4(c))

### **C. "Emergency" Meetings**

#### **1. Purposes for Which an Emergency Meeting May be Held**

Section 11125.5(b) provides that an emergency meeting may be held only in the case of an "emergency situation," defined as: (1) Work stoppage or other activity that severely impairs public health or safety, or both, or (2) Crippling disaster that severely impairs

public health or safety, or both.

The determination of whether an emergency exists for purposes of this section should be made in consultation with the CDFA Legal Office.

## **2. Notice Requirements for an Emergency Meeting**

An emergency meeting may be held without complying with the 10-day notice requirement in Section 11125 or the 48-hour notice requirement in Section 11125.4. However, newspapers of general circulation, television and radio stations that have requested notice of meetings shall be notified of the emergency by telephone at least one hour before the meeting. If telephone services are not functioning notice is deemed waived. The notice must be posted on the Internet as soon as practicable after the decision to call an emergency meeting has been made. However, newspapers, television and radio must be notified as soon as possible after the meeting of the fact of the meeting, its purpose, and any action taken. (§11125.5(c))

## **3. Specific Requirements for an Emergency Meeting**

The following are required to be posted in a public place and on the Internet for a minimum of 10 days, as soon as possible after the emergency meeting:

- Minutes of the meeting
- A list of persons notified, or attempted to be notified, of the meeting
- Any action taken at the meeting
- The rollcall vote on action taken (§11125.5(d))

## **IV. CLOSED SESSIONS**

### **A. Purposes for Which Closed Session Can be Held**

Only those specific items of business set forth in section 11126 may be transacted in closed session and only persons necessary to the discussion should be in attendance. If there is any question as to whether an item meets the closed session criteria or a person is necessary to attend, please consult with the CDFA Legal Office prior to including the matter on the agenda.

#### **1. Personnel Matters**

A board may meet in closed session to consider the appointment, employment, evaluation of performance, or dismissal of a public employee or to hear complaints or charges brought against such employee by another person. This does not mean that a board should handle personnel matters involving staff other than high ranking officials

who are directly employed by a board. All other personnel matters involving staff should be administered by its executive officer. However, in situations where proposed disciplinary action may result in litigation, the matter should be deliberated in closed session, with legal counsel present.

### Disciplinary Action

In order to consider such disciplinary action or dismissal the employee shall be given written notice of his or her right to have a public hearing rather than a closed session. The notice shall be delivered to the employee personally or by mail at least 24 hours before the meeting. If the employee does not request a public hearing, he or she must be given the opportunity to participate in the closed session.

Once the public hearing has been held, the state body may convene in closed session to deliberate on the decision to be reached. (§11126(a)(4)) If such a notice is not given any action taken during a closed session, the action taken is null and void.

### Matters Affecting Individual Privacy

A committee, consisting of less than a quorum of the full board, may meet in closed session to discuss matters which the committee has found would constitute an unwarranted invasion of the privacy of an individual licensee or applicant if discussed during an open meeting. Those matters may include review of an applicant's qualifications for employment or administrative disciplinary action against the licensee or applicant by the state body. (§11126(c)(2))

## **2. Pending Litigation**

A board may meet in closed session ***to confer with or receive advice from its legal counsel*** regarding pending litigation when discussion in open session concerning those matters would prejudice the position of the state body in the litigation. (11126(e)(1), emphasis added)

Again, please note the very specific notice requirements discussed below when a closed session is to be held to discuss "pending litigation". Litigation means an adjudicatory proceeding before a court, administrative body, hearing officer or arbitrator. Litigation is considered to be pending if: (1) it has been initiated formally (e.g. a complaint, claim or petition has been filed); or (2) based on existing facts and circumstances and on the advice of its legal counsel, the state body believes there is significant exposure to litigation against it, or it is meeting to decide whether a closed session is authorized because of significant exposure to litigation; or (3) based on existing facts and circumstances, the state body has decided or is deciding whether to initiate litigation.

(§11126(e)(2))

The CDFA Legal Office must be consulted prior to noticing a closed session item for pending litigation in order to confirm closed session is appropriate and in order to prepare a memorandum in accordance with the requirements of section 11126(e)(2)(C)(ii). The memorandum should be included with the closed meeting minutes and is confidential until the pending litigation has been finally adjudicated or otherwise settled. (§6254.25)

### **3. Real Estate Negotiations**

Under the Act, the real-property exception provides that the board can, in closed session, advise its negotiator in situations involving real estate transactions and during negotiations regarding price and terms of payment. (§ 11126(c)(7)) However, before meeting in closed session, the board must publicly identify the specific parcel in question and the party with whom it is negotiating. Again, the Act requires that the board properly notice its intent to hold a closed session and to cite the applicable authority enabling it to do so.

### **4. Response to Confidential Final Draft Audit Report**

Section 11126.2 permits a board to meet in closed session to discuss its response to a confidential draft audit report from the Bureau of State Audits. Once that audit report becomes final and is released to the public, the board may only discuss it in open session.

### **5. Threat of Criminal or Terrorist Activity**

A board may meet in closed session during a regular or special meeting to consider “matters posing a threat or potential threat of criminal or terrorist activity against the personnel, property, buildings, facilities, or equipment, including electronic data, owned, leased, or controlled by the state body,” where disclosure of those considerations could compromise or impede the safety or security of the described subjects. The Act requires the board to authorize the closed session by a two-thirds vote of the members present at the meeting. (§11126(c)(18))

### **6. Advisory Bodies/Committees May Meet in Closed Session**

To the extent a board is authorized to meet in closed session, its committees, subcommittees, and task forces may meet in closed session for the same purposes. (§11126(f)(4)) All closed session requirements and limitations apply.

Again, in order for an agency to meet in closed session, the item for discussion must be

specifically authorized by statute. If there is any doubt as to whether an item meets closed session criteria, please consult with the CDFA Legal Office.

## **7. Alternates**

Alternates may attend closed session when they are sitting in place of a regular board member who is absent or disqualified. Board alternates may not attend closed session when they are not substituting for an absent regular member. As stated by the Attorney General, “persons without an official role in the meeting should not be present.” Unless they are taking the place of an absent board member, alternates have no role in public meeting beyond that bestowed upon the general public. By permitting alternates to attend a closed session when not serving as a substitute for a regular member, the meeting would be transformed into an unauthorized “semi-closed” meeting, whereby some members of the public are admitted while others are not. Within the pending litigation closed session context, such attendance would likely result in the loss of the attorney-client privilege. (98 Ops.Cal.Atty.Gen 1011 (1999))

### **B. Notice and Reporting Requirements for Closed Sessions**

#### **1. Notice of Closed Session**

When holding a closed session, there are specific notice and reporting requirements. (§ 11126.3) Before entering closed session, a board must announce the general nature of the items to be discussed. The announcement may refer to the closed session items as they are listed on the agenda. If the closed session item is litigation that has formally commenced, the agenda and announcement must include the case title.

Please note that to obtain legal advice in closed session concerning pending litigation, the notice must cite subdivision (e) of Section 11126 and your attorney must prepare a memorandum stating the specific reasons and legal authority for the closed session.

**Note: If a board does not genuinely intend to hold a closed session, the meeting’s agenda must not list a closed session as a placeholder.**

If a closed session agenda to discuss pending litigation has been properly published, and an additional pending litigation issue subsequently arises, the board may discuss the new matter in closed session provided that postponement of the discussion would prevent the board from complying with any statutory, court-ordered, or other legally-imposed deadline. The board must publicly announce the title of, or otherwise identify the litigation unless to do so would jeopardize the ability to effectuate service of process or the agency’s ability to conclude existing settlement negotiations to its advantage. (§11126.3(d))

If you intend to have a closed session during your meeting and have any doubts as the subject matter you wish to discuss in closed session, you should contact the CDFA Legal Office to ensure that a closed session is authorized and properly noticed.

## **2. Reporting After a Closed Session**

A state body must convene in open session after a closed session to report any action taken, and any roll call vote thereon, to appoint, employ, or dismiss a public employee arising out of any closed session of the state body as required by Section 11125.2. (11126.3(f)).

### **C. Other Procedural Requirements for Closed Sessions**

There are certain additional requirements that must be met when closed sessions are held.

- In the closed session, only matters on the agenda may be discussed. (§11126.3(b))
- All closed sessions must be held during a regular or special meeting. (§11128) For example, where a board or committee meeting is scheduled to discuss only matters appropriate for a closed session, the meeting must be opened as a public meeting with an announcement immediately following that the agency will convene into closed session.
- Prior to convening the closed session, the board must announce the general nature of the items to be discussed in closed session. With respect to litigation that has already been initiated, it must announce/identify the title of, or otherwise identify the litigation to be discussed. (§11126.3(a))
- The agency is required to designate a staff person to attend the closed session and to record in a minute book a record of topics discussed and decisions made. (§11126.1) If the closed session item was pending litigation, the required legal memorandum should be included in the minute book. The minute book is not a public record subject to inspection pursuant to the Public Records Act and shall be kept confidential unless release is court ordered. (§11126.1)
- Information received and discussions held in closed session are confidential and must not be disclosed to outside parties by the members or staff who attended the closed session. (76 Ops.Cal.Atty.Gen. 289, 290-291) Disclosure waives the privilege protection.

## V. TELECONFERENCE MEETINGS

Boards may meet by teleconference. (§11123) For the purposes of the Act, 'teleconference' means a meeting of a state body, the members of which are at different locations, connected by electronic means, through either audio or both audio and video. (§11123(b)(2)) This would include telephone conference calls, webinars, webcasts, and Skype.

The law requires every teleconference meeting location be identified in the notice and agenda and be open to the public. Most importantly, the members of the state body must attend the meeting at a public location. Members are not able to attend the meeting via teleconference from their offices, homes, or other convenient location **unless** those locations are identified in the notice and agenda, and the public is permitted to attend at those locations.

This section does not prohibit a state body from providing members of the public with additional locations in which the public may observe or address the state body by electronic means, through either audio or both audio and video. (§11123(b)(1)) But, individuals should not be given access to the teleconference line for use at their home, office, or car as such locations that are not accessible to the public. In order to conduct an orderly meeting, it is recommended that a staff member is present at all remote public locations.

A limited exemption is provided for bodies created under the Marketing Act of 1937. These boards, councils and commissions (board) are not required to list in the agenda the physical locations from which each member will be participating. Only the primary location must be posted on the meeting notice and open to the public. (Food and Agricultural Code §§ 58853, 63906) However, prior to exercising this exemption, the board **shall** adopt guidelines to address cancellations, technical difficulties, ensuring transparency, and public participation.

### A. Telephone Conferencing and Webinar Requirements

Meetings held by teleconference shall otherwise comply with all applicable requirements or laws relating to a specific type of meeting or proceeding, including the following:

- The open session shall be audible to the public at the location(s) specified in the notice;
- Agendas shall be posted at all teleconference locations;



- All printed materials for discussion must be available to participants and the public attending at remote sites;
- Each teleconference location shall be identified in the notice and agenda of the meeting or proceeding. The call in number should not be posted on the notice;
- Each teleconference location shall be accessible to the public;
- The agenda shall provide an opportunity for members of the public to address the state body directly at each teleconference location;
- All votes taken during a teleconferenced meeting shall be by roll call; and
- Each board or committee member location must be posted on the meeting notice.

### **B. Webcasting**

Live webcast requires attendees to enter a code to verify participation. Questions and comments must be e-mailed or faxed to the presenter. These limitations increase the board and staffs ability to properly manage the meeting. Therefore, the webcast address may be published on the meeting notice.

### **C. Skype**

Skype should be used for the limited purpose of allowing a presenter to call in only for as long as it takes to present and answer questions. Once the presentation portion is complete, staff should make sure the presenter logs off. The presenters address is not required to be noticed, unless the presenter is also a board member.

## **VI. DELIBERATIONS AND VOTING**

The Legislature was clear in its intent that actions of state bodies be taken openly and that their deliberation be conducted openly. (§11120) In this regard, there are a number of provisions in the Act which address deliberations and voting.

### **A. Serial Meetings Prohibited**

Serial communications between a majority of members “to discuss, deliberate, or take action on any item of business that is within the subject matter of the state agency”

are prohibited. (§11123) Members must refrain from calling or otherwise contacting other members on a one-to-one basis, or conducting serial meetings, in order to discuss, deliberate, or take action outside the meeting on a matter within the subject matter of the body. For example, this could occur through a chain of communications involving contact from one member to another until a quorum of the members has been contacted. Another way a serial meeting can occur is where one member acts as the hub of a wheel and communicates individually with other members, the spokes of a wheel, which constitutes a quorum of the body. This does not prevent a board's staff from emailing materials to all board members prior to a board meeting as long as no member replies to the email.

Telephone conference calls may not be used to avoid the requirements of the Act. A conference call including members of a board, committee, subcommittee or task force sufficient to constitute a majority of that state body is prohibited, except pursuant to an authorized, noticed teleconference meeting.

In addition, a series of one-to-one telephone calls between members of a local body, where the purpose of the calls was to obtain a collective commitment on an issue, constituted a violation of the Act. (*Stockton Newspapers, Inc. v. Members of the Redevelopment Agency of the City of Stockton* (1985) 171 Cal.App.3d 95)

## **B. Prohibited Communications**

Any use of direct communication, personal intermediaries, or technological devices by a majority of the members to develop a collective decision as to action to be taken on an item to come before the state body is prohibited. (11122.5(b))

Specifically, section 11122.5, subdivision (b) provides that a majority of the board members may not e-mail each other to develop a collective concurrence as to action to be taken by the board, under any circumstance, without violating the Act. Sending emails to the executive staff, posting them on the board's Internet website, and reporting a printed version of each email at the next public meeting of the board does not overcome this prohibition. (84 Ops.Cal.Atty.Gen. 30)

## **C. Votes Resulting in a Tie**

If a board vote results in a tie, this constitutes a "no vote."

## **D. Secret Ballot Prohibited**

A board may not vote by secret ballot in a public meeting nor vote in closed session on any matter where discussion, deliberations, or action taken is required to be in an open

meeting. (68 Ops.Cal.Atty.Gen. 65, 69) For example, the election of board officers may not be conducted by secret ballot or in closed session.

#### **E. Voting by Proxy Prohibited**

Voting by proxy is not authorized. (68 Ops.Cal.Atty.Gen. 65, 70)

#### **F. Use of Electronic Devices During Meetings**

Board members should not text or email each other during an open meeting on any matter within the board's jurisdiction. They may not use electronic devices to communicate secretly. Where laptops are used by board members at the meeting because the board provides board materials electronically, the board president should make an announcement at the beginning of the meeting as to the reason for the laptops. We suggest the following (or something similar):

“You may notice board members accessing their laptops during the meeting. They are using the laptops solely to access the board meeting materials which are in electronic format.”

#### **G. Recording and Reporting Votes**

For each item on which a vote is taken, the minutes must contain a record of how each member present voted on that action item.

### **VII. MISCELLANEOUS PROVISIONS**

There are several provisions governing public meetings which do not fit under any of the above headings, but of which you should be aware.

#### **A. Prohibition on Placing Conditions on Public's Attendance**

##### **1. Sign-in**

No person can be required to register or sign-in or fulfill any other condition in order to attend a public meeting of an agency. While a person who wishes to make public comment may be asked to identify him/her for the board's record or minutes, a commenter cannot be compelled to do so or be prevented from speaking solely because the commenter refuses to identify him or herself.

If an attendance list, register, questionnaire, or other similar document is posted at or near the entrance to the room where the meeting is to be held, or is circulated to persons

present during the meeting, “it shall state clearly that the signing, registering, or completion of the document is voluntary, and that all persons may attend the meeting regardless of whether a person signs, registers, or completes the document.” (§11124)

## **2. Discrimination in Admittance to Meeting Facility**

A meeting may not be held in any facility that prohibits the admittance of any persons on the basis of race, religious creed, color, national origin, ancestry, or sex. (§11131)

## **3. Access for the Disabled**

All meetings must be accessible to the disabled. (§11131)

## **4. Charging a Fee or Requiring a Purchase for Access**

The Act prohibits holding a meeting in any location where the public is required to pay a fee or make a purchase to attend. (§11131)

### **B. Agency Recording of the Proceedings**

A tape or film record of an open and public meeting made by the agency must be made available for public inspection under the California Public Records Act, but may be erased or destroyed 30 days after the taping or recording. An inspection must be provided without charge on an audio or video tape player made available by the state agency. (§11124.1(b))

### **C. Right to Record the Proceedings and Meeting Disturbances**

Anyone attending a public meeting has a right to record the proceedings using an audio recorder or video camera or by taking pictures. ( § 11124.1(a) Additionally, a board must allow the press or other news media representative to document or broadcast a public meeting. (§ 11124.1(c))

However, if the board makes a reasonable finding that any recording is causing noise, illumination or obstructing views that persistently disrupts the meeting, the board may restrict the recording in order to eliminate the disturbance. (§ 11124.1(c)) To reduce the likelihood of a problem, the press or news media representative should be provided a specific location where these disturbances are lessened.

If any meeting is willfully interrupted by a group of persons so that order cannot be maintained, and order cannot be restored by removing these persons, a board may order the meeting room cleared and continue in session, according to the agenda. The press or other news media must be allowed to attend this session, unless they were participating in the disturbance. (§11126.5)

#### **D. Taking Agenda Items Out of Order**

Items listed on the agenda may be taken out of order, provided the purpose of moving the agenda items is not to frustrate public or prevent public comment on the item. It is a good practice to note on either the top or the bottom of your agenda that, "All times indicated and the order of business are approximate and subject to change," to alert members of the public this is a possibility. It is also advisable to alert the public to any changes in the agenda at the beginning of the meeting, particularly if the board is removing an item, as there may be person in attendance who came only to hear that item.

If your board schedules a multiple-day meeting and may move items scheduled for a subsequent day to an earlier day, you should provide notice of this possibility on your agenda. Suggested language is that, "Items scheduled for a particular day may be moved to an earlier day to facilitate the board's business." Again, the purpose may not be to frustrate public or prevent public comment.

#### **E. Opportunity for Public Comment at Meetings**

State entities must provide an opportunity for members of the public to directly address the board on each agenda item before or during the agency's discussion or consideration of the item with specific exceptions. (§11125.7) This opportunity for comment need not be made available if:

- The agenda item has previously been considered at a public meeting by a committee comprised exclusively of board members, where members of the public were provided an opportunity to address the item. However, if the item has been substantially changed since the committee meeting, a new opportunity to address the agency would be required at the full board meeting.
- The agenda item is one that may properly be considered in closed session. (§11125.7)

If a board wishes to establish a standing rule that discussion of agenda items will be given a specified amount of time, or that public comment will be limited to a certain amount of time, the board may do that by adopting reasonable regulations. (§11125.7(b))

A state agency may not prohibit public criticism of its policies, programs, or services, or of the acts or omissions of the agency. (§11125.7(c))

## **VIII. DISCLOSURE OF DOCUMENTS**

### **A. Documents Distributed Prior to the Meeting**

When writings, which are public records, are distributed to all or a majority of the members of a board or committee for discussion or consideration at a public meeting, the writings must be made available for public inspection. Generally, the records must be made available for inspection at the time of distribution to board members. (§11125.1(a))

Records exempt from disclosure under applicable provisions of the Public Records Act need not be disclosed even though the subject matter of the records may be considered or discussed at the meeting. This includes records which are drafts, notes or memoranda which will not be retained by the agency; attorney-client privileged communications; records of pending litigation and claims against the state; personnel, medical or similar files; complaint and investigatory files, except for Accusations and Proposed Decisions; and any records of data relating to examination. The determination not to disclose documents that are the subject of discussion should be made in consultation with the CDFA Legal Office.

### **B. Documents Distributed During the Meeting**

When public records pertaining to an agenda item are prepared by the state body or a member of the state body, and distributed to state body members during a meeting, the documents must be made available for public inspection at the meeting. If records are prepared by some other person, and distributed to members of the state body during a meeting, the documents must be made available for public inspection after the meeting. (§11125.1(b)) Records exempt from public disclosure under specified statutes are not required to be publicly disclosed. (§11125.1(a), (b))

### **C. Charging a Fee for Public Documents**

An agency may not charge a fee for a notice of a meeting, including the agenda, and may only charge those fees specifically authorized for public documents that are considered at the meeting. (§11126.7))

At its discretion, an agency may charge a fee to cover reproduction costs for providing the documents required to be made available, as discussed in paragraph (B), immediately above. If a board charges a fee, it is limited to the direct costs of duplication

authorized in Section 6257 for the reproduction of public records. (§11125.1(c))

Documents distributed prior to or during a meeting that are public records must be made available, upon request by a person with a disability, in appropriate alternative formats. No extra charge can be imposed for putting those documents into an alternative format.

## **IX. PENALTIES**

Any interested person may commence court action (mandamus, injunction, or declaratory relief) to stop or prevent violations or threatened violations of the Open Meeting Act, including the Attorney General and the district attorney. Court costs and reasonable attorney's fees may be awarded to a successful plaintiff to be paid from the funds of the agency. (§11130.5)

In addition, the Attorney General, a district attorney, or any interested person may seek court action "to determine whether any rule or action by the state body to penalize or otherwise discourage the expression of one or more of its members is valid or invalid under the laws of this state or of the United States . . ." (§11130(a)) This appears to be a rather unique provision, and its implications are unknown at this time.

The law also authorizes the Attorney General, a district attorney, or any interested person to seek a court action to compel a state agency to tape record its closed sessions. Upon a judgment of a violation, a court could so compel an agency. Discovery procedures for the tape recordings are also set forth. (§11130(b), (c))

Section 11130.3 authorizes a person to institute a court action to obtain a judicial determination that an action taken in violation of the notice provisions or the provisions governing closed sessions of the Act is null and void. Court costs and reasonable attorney's fees may be awarded to a successful plaintiff under this section. This section reinforces the need for a specific, informative agenda as required by Section 11125.

These remedies extend to past actions of an agency. The statute of limitations for bringing an action is 90 days. (§§11130(c), 11130.3(a)).

Section 11130.7 of the Act provides that "each member of a state body who attends a meeting of such body in violation of any provision of this article, and where the member intends to deprive the public of information to which the member knows or has reason to know the public is entitled, is guilty of a misdemeanor."

...

# **Bagley-Keene Statutes**

**California Government Code  
Sections 11120-11132**

**California Business and Professions Code  
Section 101.7**



## **BAGLEY-KEENE OPEN MEETING ACT – 2017**

**(CALIFORNIA GOVERNMENT CODE SECTION 11120-11132)**

### **11120.**

It is the public policy of this state that public agencies exist to aid in the conduct of the people's business and the proceedings of public agencies be conducted openly so that the public may remain informed.

In enacting this article the Legislature finds and declares that it is the intent of the law that actions of state agencies be taken openly and that their deliberation be conducted openly.

The people of this state do not yield their sovereignty to the agencies which serve them. The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may retain control over the instruments they have created.

This article shall be known and may be cited as the Bagley-Keene Open Meeting Act.

*(Amended by Stats. 1981, Ch. 968, Sec. 4.)*

### **11121.**

As used in this article, "state body" means each of the following:

(a) Every state board, or commission, or similar multimember body of the state that is created by statute or required by law to conduct official meetings and every commission created by executive order.

(b) A board, commission, committee, or similar multimember body that exercises any authority of a state body delegated to it by that state body.

(c) An advisory board, advisory commission, advisory committee, advisory subcommittee, or similar multimember advisory body of a state body, if created by formal action of the state body or of any member of the state body, and if the advisory body so created consists of three or more persons.

(d) A board, commission, committee, or similar multimember body on which a member of a body that is a state body pursuant to this section serves in his or her official capacity as a representative of that state body and that is supported, in whole or in part, by funds provided by the state body, whether the multimember body is organized and operated by the state body or by a private corporation.

(e) Notwithstanding subdivision (a) of Section 11121.1, the State Bar of California, as described in Section 6001 of the Business and Professions Code. This subdivision shall become operative on April 1, 2016.  
*(Amended by Stats. 2015, Ch. 537, Sec. 22. Effective January 1, 2016.)*

### **11121.1.**

As used in this article, "state body" does not include any of the following:

(a) Except as provided in subdivision (e) of Section 11121, state agencies provided for in Article VI of the California Constitution.

(b) Districts or other local agencies whose meetings are required to be open to the public pursuant to the Ralph M. Brown Act (Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5).

(c) State agencies provided for in Article IV of the California Constitution whose meetings are required to be open to the public pursuant to the Grunsky-Burton Open Meeting Act (Article 2.2 (commencing with Section 9027) of Chapter 1.5 of Part 1 of Division 2 of Title 2).

(d) State agencies when they are conducting proceedings pursuant to Section 3596.

(e) State agencies provided for in Section 109260 of the Health and Safety Code, except as provided in Section 109390 of the Health and Safety Code.

(f) The Credit Union Advisory Committee established pursuant to Section 14380 of the Financial Code.

*(Amended by Stats. 2015, Ch. 537, Sec. 23. Effective January 1, 2016.)*

### **11121.9.**

Each state body shall provide a copy of this article to each member of the state body upon his or her appointment to membership or assumption of office.

*(Amended by Stats. 1981, Ch. 968, Sec. 7.1.)*

### **11121.95.**

Any person appointed or elected to serve as a member of a state body who has not yet assumed the duties of office shall conform his or her conduct to the requirements of this article and shall be treated for purposes of this article as if he or she has already assumed office.

*(Added by Stats. 1997, Ch. 949, Sec. 1. Effective January 1, 1998.)*

## 11122.

As used in this article “action taken” means a collective decision made by the members of a state body, a collective commitment or promise by the members of the state body to make a positive or negative decision or an actual vote by the members of a state body when sitting as a body or entity upon a motion, proposal, resolution, order or similar action.

*(Amended by Stats. 1981, Ch. 968, Sec. 7.3.)*

## 11122.5.

(a) As used in this article, “meeting” includes any congregation of a majority of the members of a state body at the same time and place to hear, discuss, or deliberate upon any item that is within the subject matter jurisdiction of the state body to which it pertains.

(b) (1) A majority of the members of a state body shall not, outside of a meeting authorized by this chapter, use a series of communications of any kind, directly or through intermediaries, to discuss, deliberate, or take action on any item of business that is within the subject matter of the state body.

(2) Paragraph (1) shall not be construed to prevent an employee or official of a state agency from engaging in separate conversations or communications outside of a meeting authorized by this chapter with members of a legislative body in order to answer questions or provide information regarding a matter that is within the subject matter jurisdiction of the state agency, if that person does not communicate to members of the legislative body the comments or position of any other member or members of the legislative body.

(c) The prohibitions of this article do not apply to any of the following:

(1) Individual contacts or conversations between a member of a state body and any other person that do not violate subdivision (b).

(2) (A) The attendance of a majority of the members of a state body at a conference or similar gathering open to the public that involves a discussion of issues of general interest to the public or to public agencies of the type represented by the state body, if a majority of the members do not discuss among themselves, other than as part of the scheduled program, business of a specified nature that is within the subject matter jurisdiction of the state body.

(B) Subparagraph (A) does not allow members of the public free admission to a conference or similar gathering at which the organizers have required other participants or registrants to pay fees or charges as a condition of attendance.

(3) The attendance of a majority of the members of a state body at an open and publicized meeting organized to address a topic of state concern by a person or organization other than the state body, if a majority of the members do not discuss among themselves, other than as part of the scheduled program,

business of a specific nature that is within the subject matter jurisdiction of the state body.

(4) The attendance of a majority of the members of a state body at an open and noticed meeting of another state body or of a legislative body of a local agency as defined by Section 54951, if a majority of the members do not discuss among themselves, other than as part of the scheduled meeting, business of a specific nature that is within the subject matter jurisdiction of the other state body.

(5) The attendance of a majority of the members of a state body at a purely social or ceremonial occasion, if a majority of the members do not discuss among themselves business of a specific nature that is within the subject matter jurisdiction of the state body.

(6) The attendance of a majority of the members of a state body at an open and noticed meeting of a standing committee of that body, if the members of the state body who are not members of the standing committee attend only as observers.

*(Amended by Stats. 2009, Ch. 150, Sec. 1. Effective January 1, 2010.)*

## **11123.**

(a) All meetings of a state body shall be open and public and all persons shall be permitted to attend any meeting of a state body except as otherwise provided in this article.

(b) (1) This article does not prohibit a state body from holding an open or closed meeting by teleconference for the benefit of the public and state body. The meeting or proceeding held by teleconference shall otherwise comply with all applicable requirements or laws relating to a specific type of meeting or proceeding, including the following:

(A) The teleconferencing meeting shall comply with all requirements of this article applicable to other meetings.

(B) The portion of the teleconferenced meeting that is required to be open to the public shall be audible to the public at the location specified in the notice of the meeting.

(C) If the state body elects to conduct a meeting or proceeding by teleconference, it shall post agendas at all teleconference locations and conduct teleconference meetings in a manner that protects the rights of any party or member of the public appearing before the state body. Each teleconference location shall be identified in the notice and agenda of the meeting or proceeding, and each teleconference location shall be accessible to the public. The agenda shall provide an opportunity for members of the public to address the state body directly pursuant to Section 11125.7 at each teleconference location.

(D) All votes taken during a teleconferenced meeting shall be by rollcall.

(E) The portion of the teleconferenced meeting that is closed to the public may not include the consideration of any agenda item being heard pursuant to Section 11125.5.

(F) At least one member of the state body shall be physically present at the location specified in the notice of the meeting.

(2) For the purposes of this subdivision, "teleconference" means a meeting of a state body, the members of which are at different locations, connected by electronic means, through either audio or both audio and video. This section does not prohibit a state body from providing members of the public with additional locations in which the public may observe or address the state body by electronic means, through either audio or both audio and video.

(c) The state body shall publicly report any action taken and the vote or abstention on that action of each member present for the action.

*(Amended by Stats. 2014, Ch. 510, Sec. 1. Effective January 1, 2015.)*

### **11123.1.**

All meetings of a state body that are open and public shall meet the protections and prohibitions contained in Section 202 of the Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12132), and the federal rules and regulations adopted in implementation thereof.

*(Added by Stats. 2002, Ch. 300, Sec. 1. Effective January 1, 2003.)*

### **11124.**

No person shall be required, as a condition to attendance at a meeting of a state body, to register his or her name, to provide other information, to complete a questionnaire, or otherwise to fulfill any condition precedent to his or her attendance.

If an attendance list, register, questionnaire, or other similar document is posted at or near the entrance to the room where the meeting is to be held, or is circulated to persons present during the meeting, it shall state clearly that the signing, registering, or completion of the document is voluntary, and that all persons may attend the meeting regardless of whether a person signs, registers, or completes the document.

*(Amended by Stats. 1981, Ch. 968, Sec. 8.)*

### **11124.1.**

(a) Any person attending an open and public meeting of the state body shall have the right to record the proceedings with an audio or video recorder or a still

or motion picture camera in the absence of a reasonable finding by the state body that the recording cannot continue without noise, illumination, or obstruction of view that constitutes, or would constitute, a persistent disruption of the proceedings.

(b) Any audio or video recording of an open and public meeting made for whatever purpose by or at the direction of the state body shall be subject to inspection pursuant to the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1), but may be erased or destroyed 30 days after the recording. Any inspection of an audio or video recording shall be provided without charge on equipment made available by the state body.

(c) No state body shall prohibit or otherwise restrict the broadcast of its open and public meetings in the absence of a reasonable finding that the broadcast cannot be accomplished without noise, illumination, or obstruction of view that would constitute a persistent disruption of the proceedings.

*(Amended by Stats. 2009, Ch. 88, Sec. 42. Effective January 1, 2010.)*

## **11125.**

(a) The state body shall provide notice of its meeting to any person who requests that notice in writing. Notice shall be given and also made available on the Internet at least 10 days in advance of the meeting, and shall include the name, address, and telephone number of any person who can provide further information prior to the meeting, but need not include a list of witnesses expected to appear at the meeting. The written notice shall additionally include the address of the Internet site where notices required by this article are made available.

(b) The notice of a meeting of a body that is a state body shall include a specific agenda for the meeting, containing a brief description of the items of business to be transacted or discussed in either open or closed session. A brief general description of an item generally need not exceed 20 words. A description of an item to be transacted or discussed in closed session shall include a citation of the specific statutory authority under which a closed session is being held. No item shall be added to the agenda subsequent to the provision of this notice, unless otherwise permitted by this article.

(c) Notice of a meeting of a state body that complies with this section shall also constitute notice of a meeting of an advisory body of that state body, provided that the business to be discussed by the advisory body is covered by the notice of the meeting of the state body, provided that the specific time and place of the advisory body's meeting is announced during the open and public state body's meeting, and provided that the advisory body's meeting is conducted within a reasonable time of, and nearby, the meeting of the state body.

(d) A person may request, and shall be provided, notice pursuant to subdivision (a) for all meetings of a state body or for a specific meeting or meetings. In addition, at the state body's discretion, a person may request, and may be provided, notice of only those meetings of a state body at which a particular subject or subjects specified in the request will be discussed.

(e) A request for notice of more than one meeting of a state body shall be subject to the provisions of Section 14911.

(f) The notice shall be made available in appropriate alternative formats, as required by Section 202 of the Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12132), and the federal rules and regulations adopted in implementation thereof, upon request by any person with a disability. The notice shall include information regarding how, to whom, and by when a request for any disability-related modification or accommodation, including auxiliary aids or services may be made by a person with a disability who requires these aids or services in order to participate in the public meeting.

*(Amended by Stats. 2002, Ch. 300, Sec. 2. Effective January 1, 2003.)*

## **11125.1.**

(a) Notwithstanding Section 6255 or any other provisions of law, agendas of public meetings and other writings, when distributed to all, or a majority of all, of the members of a state body by any person in connection with a matter subject to discussion or consideration at a public meeting of the body, are disclosable public records under the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1), and shall be made available upon request without delay. However, this section shall not include any writing exempt from public disclosure under Section 6253.5, 6254, or 6254.7 of this code, or Section 489.1 or 583 of the Public Utilities Code.

(b) Writings that are public records under subdivision (a) and that are distributed to members of the state body prior to or during a meeting, pertaining to any item to be considered during the meeting, shall be made available for public inspection at the meeting if prepared by the state body or a member of the state body, or after the meeting if prepared by some other person. These writings shall be made available in appropriate alternative formats, as required by Section 202 of the Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12132), and the federal rules and regulations adopted in implementation thereof, upon request by a person with a disability.

(c) In the case of the Franchise Tax Board, prior to that state body taking final action on any item, writings pertaining to that item that are public records under subdivision (a) that are prepared and distributed by the Franchise Tax Board staff or individual members to members of the state body prior to or during a meeting shall be:

(1) Made available for public inspection at that meeting.



(2) Distributed to all persons who request notice in writing pursuant to subdivision (a) of Section 11125.

(3) Made available on the Internet.

(d) Prior to the State Board of Equalization taking final action on any item that does not involve a named tax or fee payer, writings pertaining to that item that are public records under subdivision (a) that are prepared and distributed by board staff or individual members to members of the state body prior to or during a meeting shall be:

(1) Made available for public inspection at that meeting.

(2) Distributed to all persons who request or have requested copies of these writings.

(3) Made available on the Internet.

(e) Nothing in this section shall be construed to prevent a state body from charging a fee or deposit for a copy of a public record pursuant to Section 6253, except that no surcharge shall be imposed on persons with disabilities in violation of Section 202 of the Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12132), and the federal rules and regulations adopted in implementation thereof. The writings described in subdivision (b) are subject to the requirements of the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1), and shall not be construed to limit or delay the public's right to inspect any record required to be disclosed by that act, or to limit the public's right to inspect any record covered by that act. This section shall not be construed to be applicable to any writings solely because they are properly discussed in a closed session of a state body. Nothing in this article shall be construed to require a state body to place any paid advertisement or any other paid notice in any publication.

(f) "Writing" for purposes of this section means "writing" as defined under Section 6252.

*(Amended by Stats. 2005, Ch. 188, Sec. 1. Effective January 1, 2006.)*

## **11125.2.**

Any state body shall report publicly at a subsequent public meeting any action taken, and any rollcall vote thereon, to appoint, employ, or dismiss a public employee arising out of any closed session of the state body.

*(Amended by Stats. 1981, Ch. 968, Sec. 10.3.)*

## **11125.3.**

(a) Notwithstanding Section 11125, a state body may take action on items of business not appearing on the posted agenda under any of the conditions stated below:



(1) Upon a determination by a majority vote of the state body that an emergency situation exists, as defined in Section 11125.5.

(2) Upon a determination by a two-thirds vote of the state body, or, if less than two-thirds of the members are present, a unanimous vote of those members present, that there exists a need to take immediate action and that the need for action came to the attention of the state body subsequent to the agenda being posted as specified in Section 11125.

(b) Notice of the additional item to be considered shall be provided to each member of the state body and to all parties that have requested notice of its meetings as soon as is practicable after a determination of the need to consider the item is made, but shall be delivered in a manner that allows it to be received by the members and by newspapers of general circulation and radio or television stations at least 48 hours before the time of the meeting specified in the notice. Notice shall be made available to newspapers of general circulation and radio or television stations by providing that notice to all national press wire services. Notice shall also be made available on the Internet as soon as is practicable after the decision to consider additional items at a meeting has been made.

*(Amended by Stats. 2001, Ch. 243, Sec. 9. Effective January 1, 2002.)*

#### **11125.4.**

(a) A special meeting may be called at any time by the presiding officer of the state body or by a majority of the members of the state body. A special meeting may only be called for one of the following purposes when compliance with the 10-day notice provisions of Section 11125 would impose a substantial hardship on the state body or when immediate action is required to protect the public interest:

(1) To consider "pending litigation" as that term is defined in subdivision (e) of Section 11126.

(2) To consider proposed legislation.

(3) To consider issuance of a legal opinion.

(4) To consider disciplinary action involving a state officer or employee.

(5) To consider the purchase, sale, exchange, or lease of real property.

(6) To consider license examinations and applications.

(7) To consider an action on a loan or grant provided pursuant to Division 31 (commencing with Section 50000) of the Health and Safety Code.

(8) To consider its response to a confidential final draft audit report as permitted by Section 11126.2.

(9) To provide for an interim executive officer of a state body upon the death, incapacity, or vacancy in the office of the executive officer.

(b) When a special meeting is called pursuant to one of the purposes specified in subdivision (a), the state body shall provide notice of the special meeting to each member of the state body and to all parties that have requested notice of its

meetings as soon as is practicable after the decision to call a special meeting has been made, but shall deliver the notice in a manner that allows it to be received by the members and by newspapers of general circulation and radio or television stations at least 48 hours before the time of the special meeting specified in the notice. Notice shall be made available to newspapers of general circulation and radio or television stations by providing that notice to all national press wire services. Notice shall also be made available on the Internet within the time periods required by this section. The notice shall specify the time and place of the special meeting and the business to be transacted. The written notice shall additionally specify the address of the Internet Web site where notices required by this article are made available. No other business shall be considered at a special meeting by the state body. The written notice may be dispensed with as to any member who at or prior to the time the meeting convenes files with the clerk or secretary of the state body a written waiver of notice. The waiver may be given by telegram, facsimile transmission, or similar means. The written notice may also be dispensed with as to any member who is actually present at the meeting at the time it convenes. Notice shall be required pursuant to this section regardless of whether any action is taken at the special meeting.

(c) At the commencement of any special meeting, the state body must make a finding in open session that the delay necessitated by providing notice 10 days prior to a meeting as required by Section 11125 would cause a substantial hardship on the body or that immediate action is required to protect the public interest. The finding shall set forth the specific facts that constitute the hardship to the body or the impending harm to the public interest. The finding shall be adopted by a two-thirds vote of the body, or, if less than two-thirds of the members are present, a unanimous vote of those members present. The finding shall be made available on the Internet. Failure to adopt the finding terminates the meeting.

*(Amended by Stats. 2007, Ch. 92, Sec. 1. Effective January 1, 2008.)*

## **11125.5.**

(a) In the case of an emergency situation involving matters upon which prompt action is necessary due to the disruption or threatened disruption of public facilities, a state body may hold an emergency meeting without complying with the 10-day notice requirement of Section 11125 or the 48-hour notice requirement of Section 11125.4.

(b) For purposes of this section, "emergency situation" means any of the following, as determined by a majority of the members of the state body during a meeting prior to the emergency meeting, or at the beginning of the emergency meeting:

(1) Work stoppage or other activity that severely impairs public health or safety, or both.

(2) Crippling disaster that severely impairs public health or safety, or both.

(c) However, newspapers of general circulation and radio or television stations that have requested notice of meetings pursuant to Section 11125 shall be notified by the presiding officer of the state body, or a designee thereof, one hour prior to the emergency meeting by telephone. Notice shall also be made available on the Internet as soon as is practicable after the decision to call the emergency meeting has been made. If telephone services are not functioning, the notice requirements of this section shall be deemed waived, and the presiding officer of the state body, or a designee thereof, shall notify those newspapers, radio stations, or television stations of the fact of the holding of the emergency meeting, the purpose of the meeting, and any action taken at the meeting as soon after the meeting as possible.

(d) The minutes of a meeting called pursuant to this section, a list of persons who the presiding officer of the state body, or a designee thereof, notified or attempted to notify, a copy of the rollcall vote, and any action taken at the meeting shall be posted for a minimum of 10 days in a public place, and also made available on the Internet for a minimum of 10 days, as soon after the meeting as possible.

*(Amended by Stats. 1999, Ch. 393, Sec. 3. Effective January 1, 2000. As provided in Sec. 7 of Ch. 393, amendment is to be implemented on July 1, 2001, or other date authorized by Dept. of Information Technology pursuant to Executive Order D-3-99.)*

## **11125.6.**

(a) An emergency meeting may be called at any time by the president of the Fish and Game Commission or by a majority of the members of the commission to consider an appeal of a closure of or restriction in a fishery adopted pursuant to Section 7710 of the Fish and Game Code. In the case of an emergency situation involving matters upon which prompt action is necessary due to the disruption or threatened disruption of an established fishery, the commission may hold an emergency meeting without complying with the 10-day notice requirement of Section 11125 or the 48-hour notice requirement of Section 11125.4 if the delay necessitated by providing the 10-day notice of a public meeting required by Section 11125 or the 48-hour notice required by Section 11125.4 would significantly adversely impact the economic benefits of a fishery to the participants in the fishery and to the people of the state or significantly adversely impact the sustainability of a fishery managed by the state.

(b) At the commencement of an emergency meeting called pursuant to this section, the commission shall make a finding in open session that the delay necessitated by providing notice 10 days prior to a meeting as required by Section 11125 or 48 hours prior to a meeting as required by Section 11125.4 would significantly adversely impact the economic benefits of a fishery to the participants in the fishery and to the people of the state or significantly adversely

impact the sustainability of a fishery managed by the state. The finding shall set forth the specific facts that constitute the impact to the economic benefits of the fishery or the sustainability of the fishery. The finding shall be adopted by a vote of at least four members of the commission, or, if less than four of the members are present, a unanimous vote of those members present. Failure to adopt the finding shall terminate the meeting.

(c) Newspapers of general circulation and radio or television stations that have requested notice of meetings pursuant to Section 11125 shall be notified by the presiding officer of the commission, or a designee thereof, one hour prior to the emergency meeting by telephone.

(d) The minutes of an emergency meeting called pursuant to this section, a list of persons who the president of the commission, or a designee thereof, notified or attempted to notify, a copy of the rollcall vote, and any action taken at the meeting shall be posted for a minimum of 10 days in a public place as soon after the meeting as possible.

*(Added by Stats. 1998, Ch. 1052, Sec. 21. Effective January 1, 1999.)*

## **11125.7.**

(a) Except as otherwise provided in this section, the state body shall provide an opportunity for members of the public to directly address the state body on each agenda item before or during the state body's discussion or consideration of the item. This section is not applicable if the agenda item has already been considered by a committee composed exclusively of members of the state body at a public meeting where interested members of the public were afforded the opportunity to address the committee on the item, before or during the committee's consideration of the item, unless the item has been substantially changed since the committee heard the item, as determined by the state body. Every notice for a special meeting at which action is proposed to be taken on an item shall provide an opportunity for members of the public to directly address the state body concerning that item prior to action on the item. In addition, the notice requirement of Section 11125 shall not preclude the acceptance of testimony at meetings, other than emergency meetings, from members of the public if no action is taken by the state body at the same meeting on matters brought before the body by members of the public.

(b) The state body may adopt reasonable regulations to ensure that the intent of subdivision (a) is carried out, including, but not limited to, regulations limiting the total amount of time allocated for public comment on particular issues and for each individual speaker.

(c) (1) Notwithstanding subdivision (b), when a state body limits time for public comment the state body shall provide at least twice the allotted time to a member of the public who utilizes a translator to ensure that non-English speakers receive the same opportunity to directly address the state body.

(2) Paragraph (1) shall not apply if the state body utilizes simultaneous translation equipment in a manner that allows the state body to hear the translated public testimony simultaneously.

(d) The state body shall not prohibit public criticism of the policies, programs, or services of the state body, or of the acts or omissions of the state body. Nothing in this subdivision shall confer any privilege or protection for expression beyond that otherwise provided by law.

(e) This section is not applicable to closed sessions held pursuant to Section 11126.

(f) This section is not applicable to decisions regarding proceedings held pursuant to Chapter 5 (commencing with Section 11500), relating to administrative adjudication, or to the conduct of those proceedings.

(g) This section is not applicable to hearings conducted by the California Victim Compensation Board pursuant to Sections 13963 and 13963.1.

(h) This section is not applicable to agenda items that involve decisions of the Public Utilities Commission regarding adjudicatory hearings held pursuant to Chapter 9 (commencing with Section 1701) of Part 1 of Division 1 of the Public Utilities Code. For all other agenda items, the commission shall provide members of the public, other than those who have already participated in the proceedings underlying the agenda item, an opportunity to directly address the commission before or during the commission's consideration of the item.

*(Amended by Stats. 2016, Ch. 31, Sec. 71. Effective June 27, 2016.)*

### **11125.8.**

(a) Notwithstanding Section 11131.5, in any hearing that the California Victim Compensation Board conducts pursuant to Section 13963.1 and that the applicant or applicant's representative does not request be open to the public, no notice, agenda, announcement, or report required under this article need identify the applicant.

(b) In any hearing that the board conducts pursuant to Section 13963.1 and that the applicant or applicant's representative does not request be open to the public, the board shall disclose that the hearing is being held pursuant to Section 13963.1. That disclosure shall be deemed to satisfy the requirements of subdivision (a) of Section 11126.3.

*(Amended by Stats. 2016, Ch. 31, Sec. 72. Effective June 27, 2016.)*

### **11125.9.**

Regional water quality control boards shall comply with the notification guidelines in Section 11125 and, in addition, shall do both of the following:

(a) Notify, in writing, all clerks of the city councils and county boards of supervisors within the regional board's jurisdiction of any and all board hearings at least 10 days prior to the hearing. Notification shall include an agenda for the meeting with contents as described in subdivision (b) of Section 11125 as well as the name, address, and telephone number of any person who can provide further information prior to the meeting, but need not include a list of witnesses expected to appear at the meeting. Each clerk, upon receipt of the notification of a board hearing, shall distribute the notice to all members of the respective city council or board of supervisors within the regional board's jurisdiction.

(b) Notify, in writing, all newspapers with a circulation rate of at least 10,000 within the regional board's jurisdiction of any and all board hearings, at least 10 days prior to the hearing. Notification shall include an agenda for the meeting with contents as described in subdivision (b) of Section 11125 as well as the name, address, and telephone number of any person who can provide further information prior to the meeting, but need not include a list of witnesses expected to appear at the meeting.

*(Added by Stats. 1997, Ch. 301, Sec. 1. Effective January 1, 1998.)*

## **11126.**

(a) (1) Nothing in this article shall be construed to prevent a state body from holding closed sessions during a regular or special meeting to consider the appointment, employment, evaluation of performance, or dismissal of a public employee or to hear complaints or charges brought against that employee by another person or employee unless the employee requests a public hearing.

(2) As a condition to holding a closed session on the complaints or charges to consider disciplinary action or to consider dismissal, the employee shall be given written notice of his or her right to have a public hearing, rather than a closed session, and that notice shall be delivered to the employee personally or by mail at least 24 hours before the time for holding a regular or special meeting. If notice is not given, any disciplinary or other action taken against any employee at the closed session shall be null and void.

(3) The state body also may exclude from any public or closed session, during the examination of a witness, any or all other witnesses in the matter being investigated by the state body.

(4) Following the public hearing or closed session, the body may deliberate on the decision to be reached in a closed session.

(b) For the purposes of this section, "employee" does not include any person who is elected to, or appointed to a public office by, any state body. However, officers of the California State University who receive compensation for their services, other than per diem and ordinary and necessary expenses, shall, when engaged in that capacity, be considered employees. Furthermore, for purposes of this

section, the term employee includes a person exempt from civil service pursuant to subdivision (e) of Section 4 of Article VII of the California Constitution.

(c) Nothing in this article shall be construed to do any of the following:

(1) Prevent state bodies that administer the licensing of persons engaging in businesses or professions from holding closed sessions to prepare, approve, grade, or administer examinations.

(2) Prevent an advisory body of a state body that administers the licensing of persons engaged in businesses or professions from conducting a closed session to discuss matters that the advisory body has found would constitute an unwarranted invasion of the privacy of an individual licensee or applicant if discussed in an open meeting, provided the advisory body does not include a quorum of the members of the state body it advises. Those matters may include review of an applicant's qualifications for licensure and an inquiry specifically related to the state body's enforcement program concerning an individual licensee or applicant where the inquiry occurs prior to the filing of a civil, criminal, or administrative disciplinary action against the licensee or applicant by the state body.

(3) Prohibit a state body from holding a closed session to deliberate on a decision to be reached in a proceeding required to be conducted pursuant to Chapter 5 (commencing with Section 11500) or similar provisions of law.

(4) Grant a right to enter any correctional institution or the grounds of a correctional institution where that right is not otherwise granted by law, nor shall anything in this article be construed to prevent a state body from holding a closed session when considering and acting upon the determination of a term, parole, or release of any individual or other disposition of an individual case, or if public disclosure of the subjects under discussion or consideration is expressly prohibited by statute.

(5) Prevent any closed session to consider the conferring of honorary degrees, or gifts, donations, and bequests that the donor or proposed donor has requested in writing to be kept confidential.

(6) Prevent the Alcoholic Beverage Control Appeals Board from holding a closed session for the purpose of holding a deliberative conference as provided in Section 11125.

(7) (A) Prevent a state body from holding closed sessions with its negotiator prior to the purchase, sale, exchange, or lease of real property by or for the state body to give instructions to its negotiator regarding the price and terms of payment for the purchase, sale, exchange, or lease.

(B) However, prior to the closed session, the state body shall hold an open and public session in which it identifies the real property or real properties that the negotiations may concern and the person or persons with whom its negotiator may negotiate.

(C) For purposes of this paragraph, the negotiator may be a member of the state body.

(D) For purposes of this paragraph, "lease" includes renewal or renegotiation of a lease.

(E) Nothing in this paragraph shall preclude a state body from holding a closed session for discussions regarding eminent domain proceedings pursuant to subdivision (e).

(8) Prevent the California Postsecondary Education Commission from holding closed sessions to consider matters pertaining to the appointment or termination of the Director of the California Postsecondary Education Commission.

(9) Prevent the Council for Private Postsecondary and Vocational Education from holding closed sessions to consider matters pertaining to the appointment or termination of the Executive Director of the Council for Private Postsecondary and Vocational Education.

(10) Prevent the Franchise Tax Board from holding closed sessions for the purpose of discussion of confidential tax returns or information the public disclosure of which is prohibited by law, or from considering matters pertaining to the appointment or removal of the Executive Officer of the Franchise Tax Board.

(11) Require the Franchise Tax Board to notice or disclose any confidential tax information considered in closed sessions, or documents executed in connection therewith, the public disclosure of which is prohibited pursuant to Article 2 (commencing with Section 19542) of Chapter 7 of Part 10.2 of Division 2 of the Revenue and Taxation Code.

(12) Prevent the Corrections Standards Authority from holding closed sessions when considering reports of crime conditions under Section 6027 of the Penal Code.

(13) Prevent the State Air Resources Board from holding closed sessions when considering the proprietary specifications and performance data of manufacturers.

(14) Prevent the State Board of Education or the Superintendent of Public Instruction, or any committee advising the board or the Superintendent, from holding closed sessions on those portions of its review of assessment instruments pursuant to Chapter 5 (commencing with Section 60600) of, or pursuant to Chapter 9 (commencing with Section 60850) of, Part 33 of Division 4 of Title 2 of the Education Code during which actual test content is reviewed and discussed. The purpose of this provision is to maintain the confidentiality of the assessments under review.

(15) Prevent the Department of Resources Recycling and Recovery or its auxiliary committees from holding closed sessions for the purpose of discussing confidential tax returns, discussing trade secrets or confidential or proprietary information in its possession, or discussing other data, the public disclosure of which is prohibited by law.

(16) Prevent a state body that invests retirement, pension, or endowment funds from holding closed sessions when considering investment decisions. For purposes of consideration of shareholder voting on corporate stocks held by the



state body, closed sessions for the purposes of voting may be held only with respect to election of corporate directors, election of independent auditors, and other financial issues that could have a material effect on the net income of the corporation. For the purpose of real property investment decisions that may be considered in a closed session pursuant to this paragraph, a state body shall also be exempt from the provisions of paragraph (7) relating to the identification of real properties prior to the closed session.

(17) Prevent a state body, or boards, commissions, administrative officers, or other representatives that may properly be designated by law or by a state body, from holding closed sessions with its representatives in discharging its responsibilities under Chapter 10 (commencing with Section 3500), Chapter 10.3 (commencing with Section 3512), Chapter 10.5 (commencing with Section 3525), or Chapter 10.7 (commencing with Section 3540) of Division 4 of Title 1 as the sessions relate to salaries, salary schedules, or compensation paid in the form of fringe benefits. For the purposes enumerated in the preceding sentence, a state body may also meet with a state conciliator who has intervened in the proceedings.

(18) (A) Prevent a state body from holding closed sessions to consider matters posing a threat or potential threat of criminal or terrorist activity against the personnel, property, buildings, facilities, or equipment, including electronic data, owned, leased, or controlled by the state body, where disclosure of these considerations could compromise or impede the safety or security of the personnel, property, buildings, facilities, or equipment, including electronic data, owned, leased, or controlled by the state body.

(B) Notwithstanding any other provision of law, a state body, at any regular or special meeting, may meet in a closed session pursuant to subparagraph (A) upon a two-thirds vote of the members present at the meeting.

(C) After meeting in closed session pursuant to subparagraph (A), the state body shall reconvene in open session prior to adjournment and report that a closed session was held pursuant to subparagraph (A), the general nature of the matters considered, and whether any action was taken in closed session.

(D) After meeting in closed session pursuant to subparagraph (A), the state body shall submit to the Legislative Analyst written notification stating that it held this closed session, the general reason or reasons for the closed session, the general nature of the matters considered, and whether any action was taken in closed session. The Legislative Analyst shall retain for no less than four years any written notification received from a state body pursuant to this subparagraph.

(19) Prevent the California Sex Offender Management Board from holding a closed session for the purpose of discussing matters pertaining to the application of a sex offender treatment provider for certification pursuant to Sections 290.09 and 9003 of the Penal Code. Those matters may include review of an applicant's qualifications for certification.

(d) (1) Notwithstanding any other provision of law, any meeting of the Public Utilities Commission at which the rates of entities under the commission's jurisdiction are changed shall be open and public.

(2) Nothing in this article shall be construed to prevent the Public Utilities Commission from holding closed sessions to deliberate on the institution of proceedings, or disciplinary actions against any person or entity under the jurisdiction of the commission.

(e) (1) Nothing in this article shall be construed to prevent a state body, based on the advice of its legal counsel, from holding a closed session to confer with, or receive advice from, its legal counsel regarding pending litigation when discussion in open session concerning those matters would prejudice the position of the state body in the litigation.

(2) For purposes of this article, all expressions of the lawyer-client privilege other than those provided in this subdivision are hereby abrogated. This subdivision is the exclusive expression of the lawyer-client privilege for purposes of conducting closed session meetings pursuant to this article. For purposes of this subdivision, litigation shall be considered pending when any of the following circumstances exist:

(A) An adjudicatory proceeding before a court, an administrative body exercising its adjudicatory authority, a hearing officer, or an arbitrator, to which the state body is a party, has been initiated formally.

(B) (i) A point has been reached where, in the opinion of the state body on the advice of its legal counsel, based on existing facts and circumstances, there is a significant exposure to litigation against the state body.

(ii) Based on existing facts and circumstances, the state body is meeting only to decide whether a closed session is authorized pursuant to clause (i).

(C) (i) Based on existing facts and circumstances, the state body has decided to initiate or is deciding whether to initiate litigation.

(ii) The legal counsel of the state body shall prepare and submit to it a memorandum stating the specific reasons and legal authority for the closed session. If the closed session is pursuant to paragraph (1), the memorandum shall include the title of the litigation. If the closed session is pursuant to subparagraph (A) or (B), the memorandum shall include the existing facts and circumstances on which it is based. The legal counsel shall submit the memorandum to the state body prior to the closed session, if feasible, and in any case no later than one week after the closed session. The memorandum shall be exempt from disclosure pursuant to Section 6254.25.

(iii) For purposes of this subdivision, "litigation" includes any adjudicatory proceeding, including eminent domain, before a court, administrative body exercising its adjudicatory authority, hearing officer, or arbitrator.

(iv) Disclosure of a memorandum required under this subdivision shall not be deemed as a waiver of the lawyer-client privilege, as provided for under Article 3 (commencing with Section 950) of Chapter 4 of Division 8 of the Evidence Code.

(f) In addition to subdivisions (a), (b), and (c), nothing in this article shall be construed to do any of the following:

(1) Prevent a state body operating under a joint powers agreement for insurance pooling from holding a closed session to discuss a claim for the payment of tort liability or public liability losses incurred by the state body or any member agency under the joint powers agreement.

(2) Prevent the examining committee established by the State Board of Forestry and Fire Protection, pursuant to Section 763 of the Public Resources Code, from conducting a closed session to consider disciplinary action against an individual professional forester prior to the filing of an accusation against the forester pursuant to Section 11503.

(3) Prevent the enforcement advisory committee established by the California Board of Accountancy pursuant to Section 5020 of the Business and Professions Code from conducting a closed session to consider disciplinary action against an individual accountant prior to the filing of an accusation against the accountant pursuant to Section 11503. Nothing in this article shall be construed to prevent the qualifications examining committee established by the California Board of Accountancy pursuant to Section 5023 of the Business and Professions Code from conducting a closed hearing to interview an individual applicant or accountant regarding the applicant's qualifications.

(4) Prevent a state body, as defined in subdivision (b) of Section 11121, from conducting a closed session to consider any matter that properly could be considered in closed session by the state body whose authority it exercises.

(5) Prevent a state body, as defined in subdivision (d) of Section 11121, from conducting a closed session to consider any matter that properly could be considered in a closed session by the body defined as a state body pursuant to subdivision (a) or (b) of Section 11121.

(6) Prevent a state body, as defined in subdivision (c) of Section 11121, from conducting a closed session to consider any matter that properly could be considered in a closed session by the state body it advises.

(7) Prevent the State Board of Equalization from holding closed sessions for either of the following:

(A) When considering matters pertaining to the appointment or removal of the Executive Secretary of the State Board of Equalization.

(B) For the purpose of hearing confidential taxpayer appeals or data, the public disclosure of which is prohibited by law.

(8) Require the State Board of Equalization to disclose any action taken in closed session or documents executed in connection with that action, the public disclosure of which is prohibited by law pursuant to Sections 15619 and 15641 of this code and Sections 833, 7056, 8255, 9255, 11655, 30455, 32455, 38705, 38706, 43651, 45982, 46751, 50159, 55381, and 60609 of the Revenue and Taxation Code.

(9) Prevent the California Earthquake Prediction Evaluation Council, or other body appointed to advise the Director of Emergency Services or the Governor concerning matters relating to volcanic or earthquake predictions, from holding closed sessions when considering the evaluation of possible predictions.

(g) This article does not prevent either of the following:

(1) The Teachers' Retirement Board or the Board of Administration of the Public Employees' Retirement System from holding closed sessions when considering matters pertaining to the recruitment, appointment, employment, or removal of the chief executive officer or when considering matters pertaining to the recruitment or removal of the Chief Investment Officer of the State Teachers' Retirement System or the Public Employees' Retirement System.

(2) The Commission on Teacher Credentialing from holding closed sessions when considering matters relating to the recruitment, appointment, or removal of its executive director.

(h) This article does not prevent the Board of Administration of the Public Employees' Retirement System from holding closed sessions when considering matters relating to the development of rates and competitive strategy for plans offered pursuant to Chapter 15 (commencing with Section 21660) of Part 3 of Division 5 of Title 2.

(i) This article does not prevent the Managed Risk Medical Insurance Board from holding closed sessions when considering matters related to the development of rates and contracting strategy for entities contracting or seeking to contract with the board, entities with which the board is considering a contract, or entities with which the board is considering or enters into any other arrangement under which the board provides, receives, or arranges services or reimbursement, pursuant to Part 6.2 (commencing with Section 12693), Part 6.3 (commencing with Section 12695), Part 6.4 (commencing with Section 12699.50), Part 6.5 (commencing with Section 12700), Part 6.6 (commencing with Section 12739.5), or Part 6.7 (commencing with Section 12739.70) of Division 2 of the Insurance Code.

(j) Nothing in this article shall be construed to prevent the board of the State Compensation Insurance Fund from holding closed sessions in the following:

(1) When considering matters related to claims pursuant to Chapter 1 (commencing with Section 3200) of Division 4 of the Labor Code, to the extent that confidential medical information or other individually identifiable information would be disclosed.

(2) To the extent that matters related to audits and investigations that have not been completed would be disclosed.

(3) To the extent that an internal audit containing proprietary information would be disclosed.

(4) To the extent that the session would address the development of rates, contracting strategy, underwriting, or competitive strategy, pursuant to the powers granted to the board in Chapter 4 (commencing with Section 11770) of Part 3 of Division 2 of the Insurance Code, when discussion in open session

concerning those matters would prejudice the position of the State Compensation Insurance Fund.

(k) The State Compensation Insurance Fund shall comply with the procedures specified in Section 11125.4 of the Government Code with respect to any closed session or meeting authorized by subdivision (j), and in addition shall provide an opportunity for a member of the public to be heard on the issue of the appropriateness of closing the meeting or session.

*(Amended by Stats. 2013, Ch. 352, Sec. 234. Effective September 26, 2013. Operative July 1, 2013, by Sec. 543 of Ch. 352.)*

### **11126.1.**

The state body shall designate a clerk or other officer or employee of the state body, who shall then attend each closed session of the state body and keep and enter in a minute book a record of topics discussed and decisions made at the meeting. The minute book made pursuant to this section is not a public record subject to inspection pursuant to the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1), and shall be kept confidential. The minute book shall be available to members of the state body or, if a violation of this chapter is alleged to have occurred at a closed session, to a court of general jurisdiction. Such minute book may, but need not, consist of a recording of the closed session.

*(Amended by Stats. 1981, Ch. 968, Sec. 13.)*

### **11126.2.**

(a) Nothing in this article shall be construed to prohibit a state body that has received a confidential final draft audit report from the Bureau of State Audits from holding closed sessions to discuss its response to that report.

(b) After the public release of an audit report by the Bureau of State Audits, if a state body meets to discuss the audit report, it shall do so in an open session unless exempted from that requirement by some other provision of law.

*(Added by Stats. 2004, Ch. 576, Sec. 2. Effective January 1, 2005.)*

### **11126.3.**

(a) Prior to holding any closed session, the state body shall disclose, in an open meeting, the general nature of the item or items to be discussed in the closed session. The disclosure may take the form of a reference to the item or items as they are listed by number or letter on the agenda. If the session is closed pursuant to paragraph (2) of subdivision (d) of Section 11126, the state body

shall state the title of, or otherwise specifically identify, the proceeding or disciplinary action contemplated. However, should the body determine that to do so would jeopardize the body's ability to effectuate service of process upon one or more unserved parties if the proceeding or disciplinary action is commenced or that to do so would fail to protect the private economic and business reputation of the person or entity if the proceeding or disciplinary action is not commenced, then the state body shall notice that there will be a closed session and describe in general terms the purpose of that session. If the session is closed pursuant to subparagraph (A) of paragraph (2) of subdivision (e) of Section 11126, the state body shall state the title of, or otherwise specifically identify, the litigation to be discussed unless the body states that to do so would jeopardize the body's ability to effectuate service of process upon one or more unserved parties, or that to do so would jeopardize its ability to conclude existing settlement negotiations to its advantage.

(b) In the closed session, the state body may consider only those matters covered in its disclosure.

(c) The disclosure shall be made as part of the notice provided for the meeting pursuant to Section 11125 or pursuant to subdivision (a) of Section 92032 of the Education Code and of any order or notice required by Section 11129.

(d) If, after the agenda has been published in compliance with this article, any pending litigation (under subdivision (e) of Section 11126) matters arise, the postponement of which will prevent the state body from complying with any statutory, court-ordered, or other legally imposed deadline, the state body may proceed to discuss those matters in closed session and shall publicly announce in the meeting the title of, or otherwise specifically identify, the litigation to be discussed, unless the body states that to do so would jeopardize the body's ability to effectuate service of process upon one or more unserved parties, or that to do so would jeopardize its ability to conclude existing settlement negotiations to its advantage. Such an announcement shall be deemed to comply fully with the requirements of this section.

(e) Nothing in this section shall require or authorize a disclosure of names or other information that would constitute an invasion of privacy or otherwise unnecessarily divulge the particular facts concerning the closed session or the disclosure of which is prohibited by state or federal law.

(f) After any closed session, the state body shall reconvene into open session prior to adjournment and shall make any reports, provide any documentation, and make any other disclosures required by Section 11125.2 of action taken in the closed session.

(g) The announcements required to be made in open session pursuant to this section may be made at the location announced in the agenda for the closed session, as long as the public is allowed to be present at that location for the purpose of hearing the announcement.

*(Amended by Stats. 2001, Ch. 243, Sec. 11. Effective January 1, 2002.)*

#### **11126.4.**

(a) Nothing in this article shall be construed to prevent the California Gambling Control Commission from holding a closed session when discussing matters involving trade secrets, nonpublic financial data, confidential or proprietary information, and other data and information, the public disclosure of which is prohibited by law or a tribal-state gaming compact.

(b) Discussion in closed session authorized by this section shall be limited to the confidential data and information related to the agenda item and shall not include discussion of any other information or matter.

(c) Before going into closed session the commission shall publicly announce the type of data or information to be discussed in closed session, which shall be recorded upon the commission minutes.

(d) Action taken on agenda items discussed pursuant to this section shall be taken in open session.

*(Added by Stats. 2005, Ch. 274, Sec. 1. Effective January 1, 2006.)*

#### **11126.5.**

In the event that any meeting is willfully interrupted by a group or groups of persons so as to render the orderly conduct of such meeting unfeasible and order cannot be restored by the removal of individuals who are willfully interrupting the meeting the state body conducting the meeting may order the meeting room cleared and continue in session. Nothing in this section shall prohibit the state body from establishing a procedure for readmitting an individual or individuals not responsible for willfully disturbing the orderly conduct of the meeting. Notwithstanding any other provision of law, only matters appearing on the agenda may be considered in such a session. Representatives of the press or other news media, except those participating in the disturbance, shall be allowed to attend any session held pursuant to this section.

*(Amended by Stats. 1981, Ch. 968, Sec. 15.)*

#### **11126.7.**

No fees may be charged by a state body for providing a notice required by Section 11125 or for carrying out any provision of this article, except as specifically authorized pursuant to this article.

*(Amended by Stats. 1981, Ch. 968, Sec. 16.)*

## **11127.**

Each provision of this article shall apply to every state body unless the body is specifically excepted from that provision by law or is covered by any other conflicting provision of law.

*(Amended by Stats. 1981, Ch. 968, Sec. 17.)*

## **11128.**

Each closed session of a state body shall be held only during a regular or special meeting of the body.

*(Amended by Stats. 1981, Ch. 968, Sec. 18.)*

## **11128.5.**

The state body may adjourn any regular, adjourned regular, special, or adjourned special meeting to a time and place specified in the order of adjournment. Less than a quorum may so adjourn from time to time. If all members are absent from any regular or adjourned regular meeting, the clerk or secretary of the state body may declare the meeting adjourned to a stated time and place and he or she shall cause a written notice of the adjournment to be given in the same manner as provided in Section 11125.4 for special meetings, unless that notice is waived as provided for special meetings. A copy of the order or notice of adjournment shall be conspicuously posted on or near the door of the place where the regular, adjourned regular, special, or adjourned special meeting was held within 24 hours after the time of the adjournment. When a regular or adjourned regular meeting is adjourned as provided in this section, the resulting adjourned regular meeting is a regular meeting for all purposes. When an order of adjournment of any meeting fails to state the hour at which the adjourned meeting is to be held, it shall be held at the hour specified for regular meetings by law or regulation.

*(Added by Stats. 1997, Ch. 949, Sec. 11. Effective January 1, 1998.)*

## **11129.**

Any hearing being held, or noticed or ordered to be held by a state body at any meeting may by order or notice of continuance be continued or recontinued to any subsequent meeting of the state body in the same manner and to the same extent set forth in Section 11128.5 for the adjournment of meetings. A copy of the order or notice of continuance shall be conspicuously posted on or near the door of the place where the hearing was held within 24 hours after the time of



the continuance; provided, that if the hearing is continued to a time less than 24 hours after the time specified in the order or notice of hearing, a copy of the order or notice of continuance of hearing shall be posted immediately following the meeting at which the order or declaration of continuance was adopted or made.

*(Amended by Stats. 1997, Ch. 949, Sec. 12. Effective January 1, 1998.)*

## **11130.**

(a) The Attorney General, the district attorney, or any interested person may commence an action by mandamus, injunction, or declaratory relief for the purpose of stopping or preventing violations or threatened violations of this article or to determine the applicability of this article to past actions or threatened future action by members of the state body or to determine whether any rule or action by the state body to penalize or otherwise discourage the expression of one or more of its members is valid or invalid under the laws of this state or of the United States, or to compel the state body to audio record its closed sessions as hereinafter provided.

(b) The court in its discretion may, upon a judgment of a violation of Section 11126, order the state body to audio record its closed sessions and preserve the audio recordings for the period and under the terms of security and confidentiality the court deems appropriate.

(c) (1) Each recording so kept shall be immediately labeled with the date of the closed session recorded and the title of the clerk or other officer who shall be custodian of the recording.

(2) The audio recordings shall be subject to the following discovery procedures:

(A) In any case in which discovery or disclosure of the audio recording is sought by the Attorney General, the district attorney, or the plaintiff in a civil action pursuant to this section or Section 11130.3 alleging that a violation of this article has occurred in a closed session that has been recorded pursuant to this section, the party seeking discovery or disclosure shall file a written notice of motion with the appropriate court with notice to the governmental agency that has custody and control of the audio recording. The notice shall be given pursuant to subdivision (b) of Section 1005 of the Code of Civil Procedure.

(B) The notice shall include, in addition to the items required by Section 1010 of the Code of Civil Procedure, all of the following:

(i) Identification of the proceeding in which discovery or disclosure is sought, the party seeking discovery or disclosure, the date and time of the meeting recorded, and the governmental agency that has custody and control of the recording.

(ii) An affidavit that contains specific facts indicating that a violation of the act occurred in the closed session.

(3) If the court, following a review of the motion, finds that there is good cause to believe that a violation has occurred, the court may review, in camera, the recording of that portion of the closed session alleged to have violated the act.

(4) If, following the in camera review, the court concludes that disclosure of a portion of the recording would be likely to materially assist in the resolution of the litigation alleging violation of this article, the court shall, in its discretion, make a certified transcript of the portion of the recording a public exhibit in the proceeding.

(5) Nothing in this section shall permit discovery of communications that are protected by the attorney-client privilege.

*(Amended by Stats. 2009, Ch. 88, Sec. 43. Effective January 1, 2010.)*

### **11130.3.**

(a) Any interested person may commence an action by mandamus, injunction, or declaratory relief for the purpose of obtaining a judicial determination that an action taken by a state body in violation of Section 11123 or 11125 is null and void under this section. Any action seeking such a judicial determination shall be commenced within 90 days from the date the action was taken. Nothing in this section shall be construed to prevent a state body from curing or correcting an action challenged pursuant to this section.

(b) An action shall not be determined to be null and void if any of the following conditions exist:

(1) The action taken was in connection with the sale or issuance of notes, bonds, or other evidences of indebtedness or any contract, instrument, or agreement related thereto.

(2) The action taken gave rise to a contractual obligation upon which a party has, in good faith, detrimentally relied.

(3) The action taken was in substantial compliance with Sections 11123 and 11125.

(4) The action taken was in connection with the collection of any tax.

*(Amended by Stats. 1999, Ch. 393, Sec. 5. Effective January 1, 2000.)*

### **11130.5.**

A court may award court costs and reasonable attorney's fees to the plaintiff in an action brought pursuant to Section 11130 or 11130.3 where it is found that a state body has violated the provisions of this article. The costs and fees shall be paid by the state body and shall not become a personal liability of any public officer or employee thereof.

A court may award court costs and reasonable attorney's fees to a defendant in any action brought pursuant to Section 11130 or 11130.3 where the defendant

has prevailed in a final determination of the action and the court finds that the action was clearly frivolous and totally lacking in merit.

*(Amended by Stats. 1985, Ch. 936, Sec. 2.)*

### **11130.7.**

Each member of a state body who attends a meeting of that body in violation of any provision of this article, and where the member intends to deprive the public of information to which the member knows or has reason to know the public is entitled under this article, is guilty of a misdemeanor.

*(Amended by Stats. 1997, Ch. 949, Sec. 14. Effective January 1, 1998.)*

### **11131.**

No state agency shall conduct any meeting, conference, or other function in any facility that prohibits the admittance of any person, or persons, on the basis of ancestry or any characteristic listed or defined in Section 11135, or that is inaccessible to disabled persons, or where members of the public may not be present without making a payment or purchase. As used in this section, "state agency" means and includes every state body, office, officer, department, division, bureau, board, council, commission, or other state agency.

*(Amended by Stats. 2007, Ch. 568, Sec. 32. Effective January 1, 2008.)*

### **11131.5.**

No notice, agenda, announcement, or report required under this article need identify any victim or alleged victim of crime, tortious sexual conduct, or child abuse unless the identity of the person has been publicly disclosed.

*(Added by Stats. 1997, Ch. 949, Sec. 16. Effective January 1, 1998.)*

### **11132.**

Except as expressly authorized by this article, no closed session may be held by any state body.

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**BAGLEY-KEENE OPEN MEETING ACT – 2017**  
**(CA BUSINESS AND PROFESSIONS CODE 101.7)**

**101.7.**

(a) Notwithstanding any other provision of law, boards shall meet at least three times each calendar year. Boards shall meet at least once each calendar year in northern California and once each calendar year in southern California in order to facilitate participation by the public and its licensees.

(b) The director at his or her discretion may exempt any board from the requirement in subdivision (a) upon a showing of good cause that the board is not able to meet at least three times in a calendar year.

(c) The director may call for a special meeting of the board when a board is not fulfilling its duties.

(d) An agency within the department that is required to provide a written notice pursuant to subdivision (a) of Section 11125 of the Government Code, may provide that notice by regular mail, email, or by both regular mail and email. An agency shall give a person who requests a notice the option of receiving the notice by regular mail, email, or by both regular mail and email. The agency shall comply with the requester's chosen form or forms of notice.

(e) An agency that plans to Web cast a meeting shall include in the meeting notice required pursuant to subdivision (a) of Section 11125 of the Government Code a statement of the board's intent to Web cast the meeting. An agency may Web cast a meeting even if the agency fails to include that statement of intent in the notice.

*(Amended by Stats. 2014, Ch. 395, Sec. 1. Effective January 1, 2015.)*