

### EXECUTIVE OFFICER'S REPORT.

The following are attached for review:

- A. Budget information, including revenue and expenditure reports through December 31, 2012, a FY 2012-12 expenditure projection, and a current fund condition.
- B. Personnel update.
- C. Performance measurements for the periods of 7/1 – 9/30/2012 and 10/1 – 12/31/2012.
- D. Memo from DCA and 2013 Bagley-Keene Open Meetings Act.
- E. Other informational items, including:
  - Memo from DCA regarding policy/procedure re: Petition for Reinstatement
  - Draft Performance Measurements for all DCA Boards and Bureaus
  - Dental Board of California – recent SWOT analysis for strategic plan update
  - Article re: Electronic Health Records
  - Article re: cost estimates of various provisions of the Affordable Care Act

(The narrative written report will be sent via email.)

**OCCUPATIONAL THERAPY - 3017  
BUDGET REPORT  
FY 2012-13 EXPENDITURE PROJECTION  
Jan-2013**

FISCAL MONTH 7

OBJECT DESCRIPTION	FY 2011-12		FY 2012-13				
	ACTUAL	PRIOR YEAR	BUDGET	CURRENT YEAR	PERCENT	PROJECTIONS	UNENCUMBERED
	EXPENDITURES	EXPENDITURES	STONE	EXPENDITURES	SPENT	TO YEAR END	BALANCE
	(MONTH 13)	1/31/2012	2011-12	1/31/2013			
<b>PERSONNEL SERVICES</b>							
Salary & Wages (Staff)	312,854	163,646	326,664	143,966	44%	286,023	40,641
Statutory Exempt (EO)	74,185	42,018	77,956	44,216	57%	76,696	1,260
Temp Help Reg (Seasonals)	55,998	32,921	4,000	58,190		65,625	(61,625)
Temp Help (Exam Proctors)	0						0
Board Member Per Diem	0		20,000		0%	2,000	18,000
Committee Members (DEC)							0
Overtime	0						0
Staff Benefits	175,784	96,229	225,597	104,777	46%	179,618	45,979
<b>TOTALS, PERSONNEL SVC</b>	<b>618,821</b>	<b>334,814</b>	<b>654,217</b>	<b>351,149</b>	<b>54%</b>	<b>609,962</b>	<b>44,255</b>
<b>OPERATING EXPENSE AND EQUIPMENT</b>							
General Expense	11,758	5,311	36,490	6,750	18%	12,000	24,490
Fingerprint Reports	16,455	8,874	22,000	11,515	52%	22,000	0
Minor Equipment	226		3,800		0%	7,300	(3,500)
Printing	6,252	2,475	8,591	3,747	44%	8,200	391
Communication	4,563	2,264	6,201	1,536	25%	4,200	2,001
Postage	16,465	9,843	16,812	14,655	87%	21,000	(4,188)
Insurance	0						0
Travel In State	12,388	7,261	16,250	5,275	32%	9,200	7,050
Travel, Out-of-State	0						0
Training	1,855	540	5,845		0%	500	5,345
Facilities Operations	54,192	53,171	50,942	46,389	91%	55,000	(4,058)
Utilities	0						0
C & P Services - Interdept.	0						0
C & P Services - External	0		7,000	7,507	107%	7,507	(507)
<b>DEPARTMENTAL SERVICES:</b>							
Departmental Pro Rata	87,302	47,948	109,137	81,812	75%	109,137	0
Admin/Exec	92,248	54,113	84,421	63,316	75%	84,421	0
Interagency Services			105				105
IA w/ OER							0
DOI-ProRata Internal	3,103	2,226	3,428	2,571	75%	3,428	0
Public Affairs Office	6,198	3,779	4,777	3,583	75%	4,777	0
CCED	6,521	3,936	6,213	4,659	75%	6,213	0
<b>INTERAGENCY SERVICES:</b>							
Consolidated Data Center	347	258		98		200	(200)
DP Maintenance & Supply	3,277	559	4,118	5,098	124%	6,700	(2,582)
Central Admin Svc-ProRata	72,357	36,179	76,575	38,288	50%	76,575	0
<b>EXAM EXPENSES:</b>							
Exam Supplies							0
Exam Freight							0
Exam Site Rental							0
C/P Svcs-External Expert Administrative							0
C/P Svcs-External Expert Examiners							0
C/P Svcs-External Subject Matter	1,574	999		338		2,250	(2,250)
<b>ENFORCEMENT:</b>							
Attorney General	169,585	99,805	133,243	58,085	44%	114,148	19,095
Office Admin. Hearings	27,674	18,660	1,000	3,252	325%	5,372	(4,372)
Court Reporters	3,647	1,245	0	160		1,000	(1,000)
Evidence/Witness Fees	6,380	5,530	0	4,478		7,677	(7,677)
DOI - Investigations	70,442	42,713	107,347	80,510	75%	107,347	0
Major Equipment			13,000		0%	13,000	0
Special Items of Expense							0
Other (Vehicle Operations)							0
<b>TOTALS, OE&amp;E</b>	<b>674,809</b>	<b>407,689</b>	<b>717,295</b>	<b>443,622</b>	<b>62%</b>	<b>689,152</b>	<b>28,143</b>
<b>TOTAL EXPENSE</b>	<b>1,293,630</b>	<b>742,503</b>	<b>1,371,512</b>	<b>794,771</b>	<b>116%</b>	<b>1,299,114</b>	<b>72,398</b>
Sched. Reimb.	(11,167)						0
Sched. Reimb. - Fingerprints	(15,375)	(9,333)	(22,000)	(9,261)	42%	(22,000)	0
Sched. Reimb. - External/Private		(6,150)		(4,221)			22,000
Unsched. Reimb. - Other				(98)			0
<b>NET APPROPRIATION</b>	<b>1,267,088</b>	<b>727,020</b>	<b>1,349,512</b>	<b>781,191</b>	<b>58%</b>	<b>1,277,114</b>	<b>94,398</b>
<b>SURPLUS/(DEFICIT):</b>							<b>7.0%</b>

# 3017 - Board of Occupational Therapy Analysis of Fund Condition

Prepared 2/1/2013

(Dollars in Thousands)

13-14 Governor's Budget FINAL GALLEY		Governor's Budget					
		Actual	CY	BY	BY+1	BY+2	BY+3
		2011-12	2012-13	2013-14	2014-15	2015-16	2016-17
<b>BEGINNING BALANCE</b>		\$ 894	\$ 608	\$ 945	\$ 603	\$ 238	\$ 1,843
Prior Year Adjustment		\$ 2	\$ -	\$ -	\$ -	\$ -	\$ -
Adjusted Beginning Balance		\$ 896	\$ 608	\$ 945	\$ 603	\$ 238	\$ 1,843
<b>REVENUES AND TRANSFERS</b>							
Revenues:							
125600	Other regulatory fees	\$ 22	\$ 25	\$ 26	\$ 26	\$ 26	\$ 26
125700	Other regulatory licenses and permits	\$ 120	\$ 146	\$ 153	\$ 153	\$ 153	\$ 153
125800	Renewal fees	\$ 789	\$ 836	\$ 866	\$ 866	\$ 866	\$ 866
125900	Delinquent fees	\$ 14	\$ 15	\$ 14	\$ 14	\$ 14	\$ 14
141200	Sales of documents	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
142500	Miscellaneous services to the public	\$ 8	\$ 8	\$ 8	\$ 8	\$ 8	\$ 8
150300	Income from surplus money investments	\$ 3	\$ 1	\$ 2	\$ 1	\$ -	\$ 4
160400	Sale of fixed assets	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
161000	Escheat of unclaimed checks and warrants	\$ 1	\$ 1	\$ 1	\$ 1	\$ 1	\$ 1
161400	Miscellaneous revenues	\$ 1	\$ -	\$ -	\$ -	\$ -	\$ -
164300	Penalty Assessments	\$ 21	\$ 16	\$ 16	\$ 16	\$ 16	\$ 16
Totals, Revenues		\$ 979	\$ 1,048	\$ 1,086	\$ 1,085	\$ 1,084	\$ 1,088
Transfers from Other Funds							
F00001	GF loan per item 1475-011-3017 BA of 2003 (repa)	\$ -	\$ 640	\$ -	\$ -	\$ -	\$ -
F00002	GF loan per BA of 2009 (repay)	\$ -	\$ -	\$ -	\$ -	\$ 2,000	\$ -
Transfers to Other Funds							
T00001	GF loan per 1475-011-3017 BA of 2003	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
T00002	GF loan per BA of 2009	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
T00001	GF loan repayment per Ch 697/00	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Totals, Revenues and Transfers		\$ 979	\$ 1,688	\$ 1,086	\$ 1,085	\$ 3,084	\$ 1,088
Totals, Resources		\$ 1,875	\$ 2,296	\$ 2,031	\$ 1,688	\$ 3,322	\$ 2,931
<b>EXPENDITURES</b>							
Disbursements:							
8880	FSCU (State Operations)	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
0840	SCO (State Operations)	\$ -	\$ 1	\$ -	\$ -	\$ -	\$ -
1110	Program Expenditures (State Operations)	\$ 1,267	\$ 1,350	\$ 1,422	\$ 1,450	\$ 1,479	\$ 1,509
FISCAL				\$ 6			
		\$ 1,267	\$ 1,351	\$ 1,428	\$ 1,450	\$ 1,479	\$ 1,509
<b>FUND BALANCE</b>							
Reserve for economic uncertainties		\$ 608	\$ 945	\$ 603	\$ 238	\$ 1,843	(\$ 1,422)
<b>Months in Reserve</b>		5.4	7.9	5.0	1.9	14.7	

**NOTES:**

- A. ASSUMES WORKLOAD AND REVENUE PROJECTIONS ARE REALIZED
- B. EXPENDITURE GROWTH PROJECTED AT 2% BEGINNING FY 2014-15

## Performance Measures

### Q1 Report (July - September 2012)

To ensure stakeholders can review the Board's progress toward meeting its enforcement goals and targets, we have developed a transparent system of performance measurement. These measures will be posted publicly on a quarterly basis.

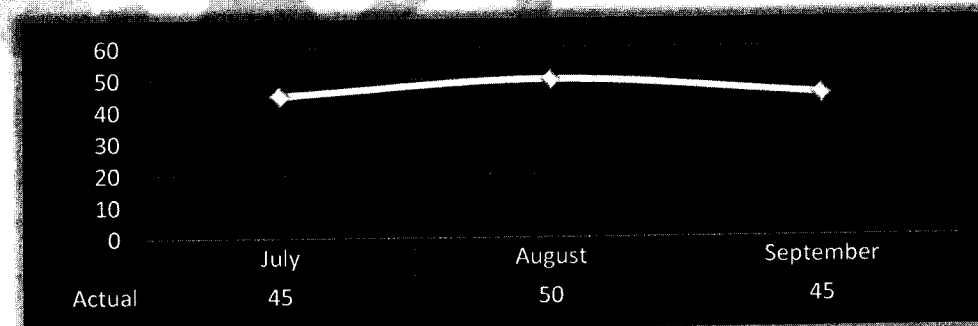
#### Volume

Number of complaints and convictions received.

**Q1 Total: 140**

*Complaints: 110 Convictions: 30*

**Q1 Monthly Average: 47**

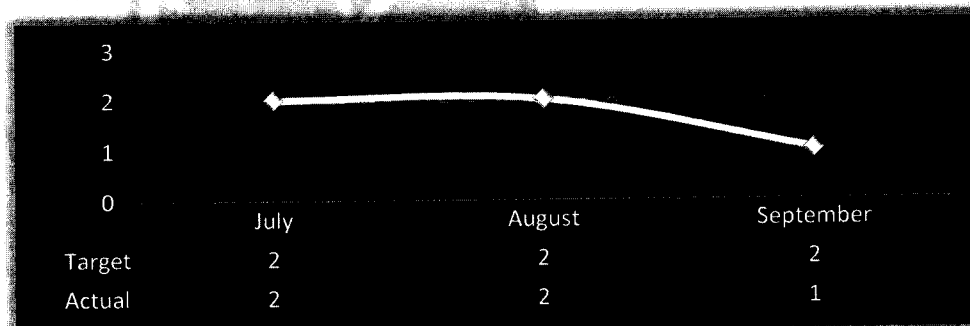


#### Intake

Average cycle time from complaint receipt, to the date the complaint was assigned to an investigator.

**Target: 2 Days**

**Q1 Average: 2 Days**

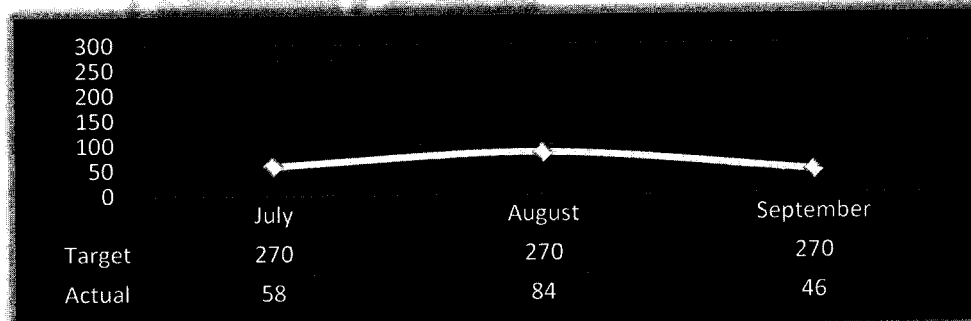


## Intake & Investigation

Average cycle time from complaint receipt to closure of the investigation process. Does not include cases sent to the Attorney General or other forms of formal discipline.

**Target: 270 Days**

**Q1 Average: 65 Days**

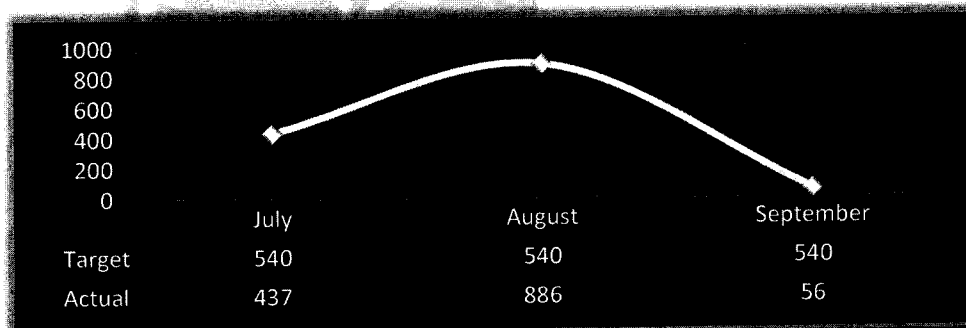


## Formal Discipline

Average number of days to complete the entire enforcement process for cases resulting in formal discipline. (Includes intake and investigation by the Board, and prosecution by the AG)

**Target: 540 Days**

**Q1 Average: 460 Days**



## Probation Intake

Average number of days from monitor assignment, to the date the monitor makes first contact with the probationer.

**Target: 10 Days**

**Q1 Average: N/A**

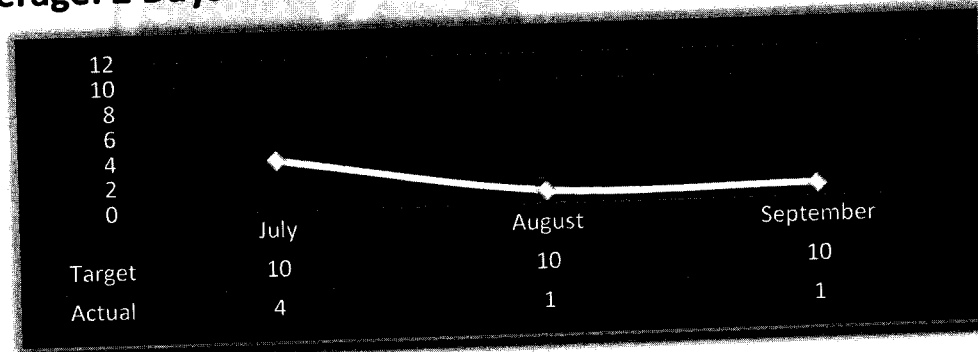
*The Board did not contact any probationers this quarter.*

## Probation Violation Response

Average number of days from the date a violation of probation is reported, to the date the assigned monitor initiates appropriate action.

**Target: 10 Days**

**Q1 Average: 2 Days**



## Performance Measures

### Q2 Report (October - December 2012)

To ensure stakeholders can review the Board's progress toward meeting its enforcement goals and targets, we have developed a transparent system of performance measurement. These measures will be posted publicly on a quarterly basis.

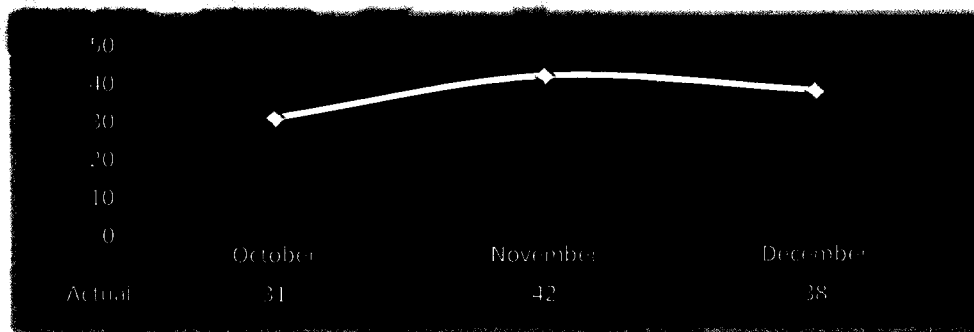
#### Volume

Number of complaints and convictions received.

**Q2 Total: 111**

*Complaints: 80 Convictions: 31*

**Q2 Monthly Average: 37**



#### Intake

Average cycle time from complaint receipt, to the date the complaint was assigned to an investigator.

**Target: 2 Days**

**Q2 Average: 2 Days**

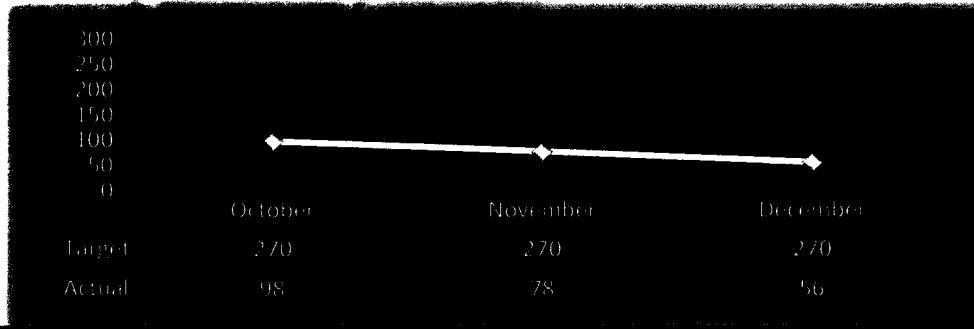


## Intake & Investigation

Average cycle time from complaint receipt to closure of the investigation process. Does not include cases sent to the Attorney General or other forms of formal discipline.

Target: 270 Days

Q2 Average: 78 Days



## Formal Discipline

Average number of days to complete the entire enforcement process for cases resulting in formal discipline. (Includes intake and investigation by the Board, and prosecution by the AG)

Target: 540 Days

Q2 Average: N/A

*The Board did not report any cases that closed in formal discipline.*

## Probation Intake

Average number of days from monitor assignment, to the date the monitor makes first contact with the probationer.

Target: 10 Days

Q2 Average: N/A

*The Board did not contact any new probationers this quarter.*

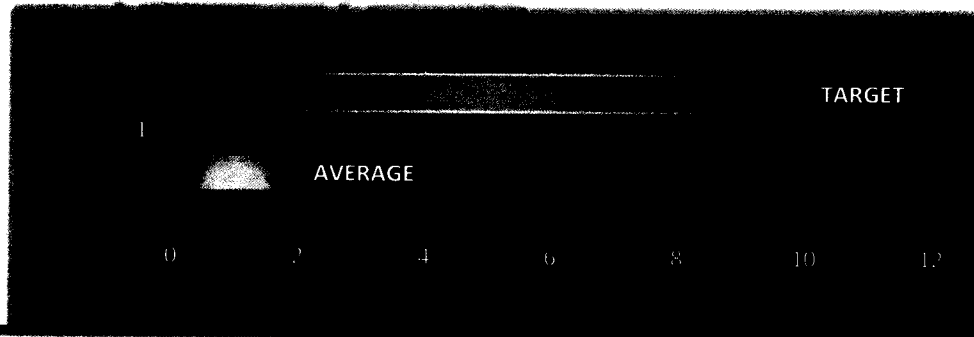


## Probation Violation Response

Average number of days from the date a violation of probation is reported, to the date the assigned monitor initiates appropriate action.

**Target: 10 Days**

**Q2 Average: 2 Days**





## MEMORANDUM

**DATE:** January 6, 2012

**TO:** Executive Officers  
Executive Directors  
Registrar  
Bureau Chiefs  
Interested Parties

**FROM:**   
DOREATHEA JOHNSON  
Deputy Director  
Legal Affairs

**Subject:** Public Meetings (Bagley-Keene Open Meeting Act)

The attached guide includes all statutory amendments through January 1, 2012. Please disregard all of our previous memoranda on the subject, and our Guide to the Bagley-Keene Open Meeting Act, issued January 5, 2011. We have made no changes to the guide but have updated the law to reflect a change made to Government Code § 11126. The change does not impact our agencies.

We hope you find this document helpful in answering questions you may have about the requirements of the Open Meeting Act. If you have any suggestions for ways to improve the guide in the future, please let us know.



**GUIDE TO THE**  
**BAGLEY-KEENE OPEN MEETING ACT**  
**(Includes Amendments through January 1, 2012)**

**Prepared by:**

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# BAGLEY-KEENE OPEN MEETING ACT

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**GUIDE TO THE  
BAGLEY-KEENE OPEN MEETING ACT  
(Includes Amendments through January 1, 2012)**

This guide is an update on the provisions of the public meetings law governing state agencies, officially called the Bagley-Keene Open Meeting Act. (Article 9 (commencing with Section 11120), Chapter 1, Part 1, Division 3, Title 2 of the Government Code). 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, 2012. Please disregard all earlier memoranda and the previous Guide to the Bagley-Keene Open Meeting Act (distributed January 5, 2011) on this subject.

All statutory references are to the Government Code.

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

Section 11120 sets forth the purpose of the law:

"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."

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. Third, to conduct such meetings in open session, except where a closed session is specifically authorized. We use the terms "agency" and "board" to mean not only boards, but also commissions and any examining committees or boards within the jurisdiction of the Medical Board of California.

## **II. BOARD, COMMITTEE, SUBCOMMITTEE, TASK FORCE 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)) The law now prohibits use by a majority of the members of a state body of direct communications or a series of communications 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))

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

The law recognizes that not all gatherings of a majority of members of a state body at a single location constitute a meeting. Current law provides that the provisions of the Act do not apply to the following situations, **provided that** "a majority of the members do not discuss among themselves, other than as part of a scheduled program, business of a specified nature that is within the subject matter 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 of state concern by a person or organization other than 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))
- 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))

The law does not, however, prevent an employee or official from engaging 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.

### **C. Board and Committee Meetings**

There are two basic types of meetings held by agencies in the Department of Consumer Affairs. 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 less than a quorum of the members of the full board. Subcommittee and task force meetings are variations of committee meetings.

Board meetings have historically been required to be noticed and open to the public, except where a closed session is authorized. 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 fewer than three persons. (NOTE – it is the number of persons on the committee [not the number of board members] that is determinative.)

Where a committee of fewer than three persons is to meet, and the 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 is not precluded from attending such a meeting.

**[Restriction on Attendance at Committee Meetings]** The law allows attendance by a majority of members at 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 Office of the Attorney General has addressed in a formal opinion a provision in the Brown Act relating to the attendance of "observers" at a committee meeting. 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 in special chairs on the dais with the committee. (81 Ops.Cal.Atty.Gen. 156)

Thus, under the provisions of section 11122.5(c)(6), and the opinion of the California Attorney General, if a majority of members of the full board are present at a committee meeting, members who are not members of the committee that is meeting may attend that meeting only as observers. The board members who are not committee members may not sit on the dais with the committee, and may not participate in the meeting by making statements or asking questions.

If a board schedules its committee meetings seriatim, and other board members are typically present to ultimately be available for their own committee meeting, your notice 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."

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.

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 Open Meeting Act 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)."

### **III. TYPES OF MEETINGS; PURPOSE; NOTICE; OTHER REQUIREMENTS**

Boards and committees may hold several types of meetings, including a regularly scheduled meeting, a "special" meeting, or an "emergency" meeting under the provisions of section 11125.5. This section of the memorandum addresses who can hold certain types of meetings, the purposes for which the meetings can be held, notice requirements, and any other special requirements or prohibitions.

#### **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 the business 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 licensing act, 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 the meetings is essentially dictated by the jurisdiction of the board as found in the board's licensing act. There are no statutory restrictions in the Open Meeting Act on the purposes for which a regularly scheduled meeting may be held.

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

###### **a. Board Meetings**

An agency is required to give at least 10 calendar days written notice of each board meeting to be held. (§11125(a).) 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 to the website posting, effective January 1, 2003, the notice is required to be made available in appropriate alternate formats upon request by any person with a disability.

The notice of each board meeting must include an agenda that is prepared for the meeting. The agenda must include all items of business to be transacted or discussed at the meeting. " ... A brief general description of an item generally need not exceed 20 words. ... No item shall be added to the agenda subsequent to the provision of this notice." (§11125(b)) This provision does not, however, preclude amending an agenda provided the amended notice is distributed and posted on the Internet at least 10 calendar days prior to the meeting. Effective January 1, 2003, the notice must 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. We suggest the following as standard language:

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 \_\_\_\_\_ at (916) \_\_\_\_\_ or sending a written request to that person at the Board [Address], Sacramento, California, [zip code]. Providing your request at least five (5) business days before the meeting will help ensure availability of the requested accommodation.

The definition of "action taken" in Section 11122 is of some aid in determining what the Legislature intended by use of the words "items of business to be transacted."

"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."

General agenda items such as "New Business," "Old Business," "Executive Officer's Report," "Committee Reports," "President's Report," "Miscellaneous," etc., without specifying the particular matters thereunder, cannot be used to circumvent this requirement. 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 body's 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)

Items not included on the agenda may not be discussed, even if no action is to be taken by the agency. However, we offer two suggestions so members of the public and board members may raise issues that are not on the agenda.

We strongly encourage boards to include an item on their agendas for "Public Comment on Matters Not on the Agenda." This gives persons who are attending a meeting an opportunity to raise any issues they may have, which may not be 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))

We also strongly encourage boards to include an item on their agenda for "Agenda Items for Future Meetings." 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.

**[CAVEAT: 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:

"14911. 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."

Effective 1/1/98, a sentence was added to subdivision (c) of Section 11125.1 to state that "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." (Stats. 1997, Chapt. 949; SB 95) The Legal Office interprets this provision to supersede any provisions in particular practice acts which require newspaper publication of board or committee meetings. Boards and committees, of course, retain the discretion to publish notices in newspapers if they so chose.

#### **b. Committee, Subcommittee or Task Force Meetings**

Each agency is required to give notice of committee, subcommittee or task force ("committee") meetings to be held. However, this requirement does not apply if the committee consists of less than three persons. It is the number of persons on the committee that is determinative, not how many of the persons are board members. Thus, if a committee consisted of two board members and two other interested persons, its meetings would have to meet all the requirements of the Open Meeting Act.

Notice of committee meetings must be provided and posted on the Internet at least 10 calendar days in advance of the meeting. (§11125(a)) The notice "shall include a brief, general description of the business to be transacted or discussed, and no item shall be added subsequent to the provision of the notice." (§11125(c)) The notice must also include the Website address where the notice can be accessed on the Internet. Although the law does not so specify, we would suggest also including in the notice the name, address, and telephone number of a contact person who can provide further information prior to the meeting. As with board meetings, there is no requirement that the notice be published in any newspaper or other periodical. However, the notice must be provided to any person or persons who have requested to be notified of the particular committee's meetings. You may elect to send such notice to those persons on your regular mailing list.

Remember you must post your notice on the Internet at least 10 calendar days in advance of the meeting and must make the notice available in appropriate alternate formats upon request by any person with a disability.

Provision is made for certain non-emergency, but sometimes necessary, committee meetings. Where, during the course of a regularly scheduled and properly noticed board meeting, the board desires that a committee presently discuss an item of business on the agenda, the committee may do so provided (a) the specific time and place of the committee meeting is announced during the public meeting of the board, and (b) the committee meeting is conducted within a reasonable time of, and nearby, the meeting of the board. (§11125(c))

#### **4. Specific Requirements for Regularly-Scheduled Meetings**

There are no specific requirements, other than those set forth above, for regularly scheduled board, committee, subcommittee or task force meetings.

## **5. Specific Prohibitions on Holding a Regularly-Scheduled Meeting**

There are no statutory prohibitions in the Open Meeting Act on a board, committee, subcommittee or task force conducting a regularly scheduled meeting.

We again remind you that, with respect to committee meetings, members of the board who are not members of the committee that is meeting may only attend the committee meeting as observers. This means these members may not sit on the dais with the committee, make any statements, or ask any questions during the committee meeting. (81 Ops.Cal.Atty.Gen. 156)

## **B. "Special" Meetings**

SB 95 of 1997 created a new category of meeting, that being a "special" meeting.

### **1. Who May Hold a Special Meeting**

A board, committee, subcommittee or task force may hold a special meeting.

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

The only purposes for which a special meeting may be held are set forth in section 11125.4, and are drawn from the purposes for which an emergency meeting could be held under the prior law. In essence, the Legislature recharacterized those purposes as constituting "special" circumstances rather than "emergency" circumstances. Section 11125.4 provides in part that:

"(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 where compliance with the 10-day notice provisions of Section 11125 would impose a substantial hardship on the state body or where 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.

\* \* \*

Department of Consumer Affairs licensing boards would most likely hold a special meeting for the purposes set forth in subdivisions (1), (2), (3), (4), and (6).

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

A special meeting can be called at any time by the presiding officer or a majority of the members of the state body, provided the 10-day notice requirements of section 11125 "would impose a substantial hardship on the state body or where immediate action is required to protect the public interest." (§11125.4(a)) The only purposes for which the meeting can be held are those set forth above.

The normal 10-day advance notice is not required for special meetings. However, notice of the special meeting is required to 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 is 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)) The notice must contain the Website address where the notice may be accessed on the Internet.

**[CAVEAT: 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.]**

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

At the commencement of a special meeting, the agency must make a finding in open session that providing a 10-day notice of the meeting would pose a substantial hardship on the agency, or that immediate action is required to protect the public interest. The specific facts constituting the hardship or need for immediate action must be articulated. This finding must be adopted by a two-thirds (2/3) vote of the agency 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 agency's finding must be made available on the Internet. (§11125.4(c))

#### **5. Specific Prohibitions on Holding a Special Meeting**

As discussed above, a special meeting may only be held for the purposes set forth in section 11125.4(b). Other than the limitation on the purposes of the meeting, there are no statutory prohibitions in the Open Meeting Act on a board, committee, subcommittee or task force conducting a special meeting.

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

#### **1. Who May Hold an Emergency Meeting**

A board, committee, subcommittee or task force may hold an emergency meeting.

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

As noted above, S.B. 95 of 1997 recharacterized a number of "emergency" situations as "special" situations. This resulted in the narrowing of situations for which an emergency meeting may be held. Section 11125.5 provides 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.

"(2) Crippling disaster that severely impairs public health or safety, or both." (§11125.5(b))

#### **3. 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))

#### **4. 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))

#### **5. Specific Prohibitions on Holding an Emergency Meeting**

As discussed above, an emergency meeting may only be held for the purposes set forth in section 11125.5(b).

### **IV. CLOSED SESSIONS**

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

"Closed" sessions were formerly called "executive" sessions. Since all references in the Open Meeting Act have been changed from "executive" session to "closed" session, throughout this memorandum we will refer to such sessions as "closed" sessions.

Section 11123 states that "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."

Section 11126 sets forth those specific items of business which may be transacted in closed session. Only those enumerated items of business may be conducted in closed session. An agency in the Department may convene a closed session pursuant to Section 11126 for the following purposes.

##### **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 unless the employee requests a public hearing." 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 . . . which notice shall be delivered to the employee personally or by mail at

least 24 hours before the meeting." (§11126(a)) If such a notice is not given any action taken during a closed session for the above reason is null and void. Once the public hearing has been held, the agency may convene into closed session to deliberate on the decision to be reached. (§11126(a)(4))

Prior to January 1, 1995, section 11126(a) did not apply to employees who were appointed to their positions, such as executive officers, executive directors, and registrars (referred to as "executive officer" for convenience). For example, any decision or deliberations made in the selection or dismissal of an executive officer previously had to be conducted in open session. (68 Ops.Cal.Atty.Gen. 34.) However, with the enactment of SB 1316 (Stats. 1994, Chapt. 845) and SB 95 (Stats. 1997, Chapt. 949), a board can now meet in closed session to consider the appointment, employment, evaluation of, or dismissal of its executive officer, unless the executive officer requests a public hearing. (§11126(a)(1), (2)) SB 1316 supersedes the conclusion reached in 68 Ops.Cal.Atty.Gen. 34. As noted above, 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 the executive officer does not request a public hearing, he or she must be given the opportunity for a hearing in closed session. After the hearing, the executive officer should be excused from the closed session, and the board may then continue in closed session to deliberate on the decision to be reached. (§11126(a)(4))

Section 11126(a) is not to be interpreted to mean that a board is required to handle civil service personnel matters itself. Normally, this function of an agency is administered by its executive officer in conjunction with the Director of Consumer Affairs, who shares authority with respect to civil service personnel.

## **2. Examination Matters**

A board may meet in closed session to "prepare, approve, grade or administer examinations." (§11126(c)(1)) Essentially, this includes any discussion regarding the actual content of examinations, and their reliability and validity. If an agency is perusing examination samples in order to choose one over the others, this may be done in closed session. On the other hand, if an agency is discussing, for example, the general logistics of administering an examination, then this would not be proper subject matter for a closed session. A basic rule is that if a meeting concerns the grading, specific content, validity of an examination, or examination security, then it can and should be conducted in closed session.

Also, an agency may hear appeals from examinees or re-review examinations in closed session as this would be included in the "grading" of the examination.

## **3. 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 in an open meeting, . . . 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." (§11126(c)(2))

Thus, review by a committee (or subcommittee of an examining committee) of an applicant's qualifications for licensure could properly be done in a closed session. Also, for example, an enforcement committee could convene in closed session to discuss an inquiry related to a particular licensee or licensees prior to any action being filed.

**CAVEAT: This closed session provision does not authorize such a review by the full board. Nor does it generally authorize a committee of a board to review complaints, investigation reports, or other information to determine whether disciplinary or other action should be filed against a licensee.**

To ensure that board members render an impartial and fair decision in considering an Administrative Law Judge's proposed decision, board members are precluded from involving themselves in the investigation or prosecution phase of an action. (§11430.10 *et seq.*) The board's role is that of judge in the case. If a particular board member has any significant involvement in the investigative or prosecution phases, he or she must disqualify himself/herself from participation in the board's action relative to the proposed decision, and not attempt to influence any other board member regarding the decision. Legal counsel should be consulted before any enforcement actions are discussed with individual licensees, as such discussions may impact participation by the member in a final decision on a case (§11430.60), and may require disclosures under the provisions of the state's Administrative Procedure Act. (§11430.50)

Even though these committee meetings may consist entirely of subject matter proper for closed session they are required to be noticed as discussed above.

#### **4. Administrative Disciplinary Matters**

A board may meet in closed session to deliberate on a decision in an administrative disciplinary proceeding under the Administrative Procedure Act. (§11400, *et seq.*; §11126(c)(3)) In the closed session, the board may decide whether to adopt a Proposed Decision, review a transcript of a hearing and render a decision of its own, deliberate upon evidence heard by the agency itself, or consider a stipulation.

This section does not authorize an agency to convene into closed session for the purpose of assigning cases, *i.e.* deciding whether a case should be heard by a hearing officer alone or by the agency itself with a hearing officer. This section does not

authorize an agency to convene into closed session to review investigation files or complaints. Members of boards that have the discretion to hear cases should not review pending complaints or investigation files for the reasons given above.

### **5. Board of Accountancy Matters**

The enforcement advisory committee established by the State Board of Accountancy pursuant to Business and Professions Code Section 5020 may convene in a closed session to "consider disciplinary action against an individual accountant prior to the filing of an accusation." (§11126(f)(3)) And the qualifications examining committee established by that board pursuant to Business and Professions Code Section 5023 may convene in closed session to "interview an individual applicant or accountant regarding the applicant's qualifications."

As noted above, such administrative and examining committee meetings are required to be noticed as previously discussed in this memorandum.

### **6. 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)) 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 agency's legal counsel must submit a memorandum which complies with the requirements of Section 11126(e)(2)(C)(ii) prior to the closed session if possible, but no later than one week after the closed session. This document is confidential until the pending litigation has been finally adjudicated or otherwise settled. (§6254.25)

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

Section 11126.2 (added effective January 1, 2005) permits an agency to meet in closed session to discuss its response to a confidential final draft audit report from the Bureau of State Audits. However, once that audit report becomes final and is released to the public, the agency may only discuss it in open session.

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

Effective January 1, 2006, AB 277 (Chap. 288, Stats. 2005) authorizes an agency at a regular or special meeting to meet in closed session 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 law (Section 11126(c)(18)) requires the agency to authorize the closed session by a two-thirds vote of the members present at the meeting.

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

To the extent a licensing board, which is defined as a "state body" in the Open Meeting Act, is authorized to meet in closed session, then committees, subcommittees, or other bodies advisory to the licensing board, which are also defined as "state bodies," may meet in closed session for the same purposes as the licensing board. (§11126((f), (4)-(6))

## **10. Open Session Otherwise Required**

Any other business transacted by an agency must be in open session. Only for the above-mentioned reasons may a board within the Department of Consumer Affairs meet in closed session. (§11132) A board may not meet in closed session for the purpose of electing officers or to discuss the proposal or adoption of rules and regulations. Further, a board may not convene in closed session to discuss testimony received during a hearing on proposed rules and regulations. Finally, an agency may not meet in closed session because it wants to have a frank and open discussion among only members on a matter of controversy. In order for an agency to meet in closed session, the closed session must be specifically authorized by statute.

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

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

When a closed session will constitute part or all of a meeting, it is important to note Government Code Section 11126.3, which requires that:

"(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. [A provision applicable to the Public Utilities Commission is not included herein.] If the session is closed pursuant to subparagraph (A) of paragraph (2) of subdivision (e) of Section 11126 [litigation has already commenced], 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."

Thus, if the meeting will consist in part or in its entirety of a closed session, you must include on the notice of the meeting the above-described information. Pay particular attention to these very specific requirements if the closed session is to discuss pending litigation. 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. Subdivisions of Government Code Section 11126, discussed under "Closed Sessions" above, will generally be the statutory authority cited.

If a closed session agenda to discuss pending litigation has been properly published, and an additional pending litigation issue subsequently arises, the state agency may discuss the new matter in closed session provided that postponement of the discussion would prevent the state agency from complying with any statutory, court-ordered, or other legally-imposed deadline. The state agency 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 to do so would jeopardize 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, you should first contact your Legal Division attorney to ensure that a closed session is authorized and properly noticed.

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

Section 11126.3(f), requires a state body to convene in open session after a closed session and to report as required in Section 11125.2, which states that:

"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."

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

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

1. All closed sessions must be held during a regular or special meeting (§11128); they may not be scheduled independently of a noticed meeting of the board or committee. Where, for example, a board or committee meeting is scheduled to discuss only matters appropriate for a closed session, the meeting should be opened

as a public meeting with an announcement immediately following that the agency will convene into closed session.

2. As discussed under "Notice Required," above, prior to holding the closed session the agency must announce the general reason(s) for the closed session and the specific statutory or other legal authority under which the session is held. (§11126.3(a)) With respect to litigation that has already been initiated, it must announce the title of or otherwise identify the litigation. (§11126.3(a)) Other specific notice requirements, discussed above, also apply to notices regarding pending litigation. In the closed session, only matters covered in the statement may be discussed. (§11126.3(b))

3. 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)

4. The minute book referenced in (3) is available only to members of the agency, or if a violation of the Open Meeting Act is alleged, to a court of general jurisdiction. (§11126.1)

5. Information received and discussions held in closed session are **confidential** and must not be disclosed to outside parties by members or staff who attended the closed session. A recent opinion of the Office of the California Attorney General concluded that:

"A local school board member may not publicly disclose information that has been received and discussed in closed session concerning pending litigation unless the information is authorized by law to be disclosed." (80 Ops.Cal.Atty.Gen. 231)

That opinion also cited a previous opinion, in which the Attorney General stated that "We have ... routinely observed that it would be *improper* for information received during a closed session to be publicly disclosed." (76 Ops.Cal.Atty.Gen. 289, 290-291; Emphasis in the original.)

## **V. MEETING BY TELECONFERENCING**

Prior to January 1, 1995, the Bagley-Keene Open Meeting Act contained no provision for conducting meetings where the participating members were not physically present in one location.

Effective 1/1/95, subdivision (b) was added to Government Code section 11123 to authorize meetings by teleconference. (Stats. 1994, Chapt. 1153; AB 3467) That subdivision has been amended several times, most recently by AB 192 of 2001, and it currently provides:

"(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."

A method is thus available whereby meetings may be conducted by audio or video teleconferencing provided the criteria set forth in the statute have been met. Note



the restriction in subdivision (b)(1)(E) that prohibits a closed session emergency meeting. Emergency meetings in open session may be conducted by teleconference.

We emphasize that the law now requires every teleconference meeting location to be identified in the notice and agenda and to be open to the public. Most importantly, the members of the agency must attend the meeting at a public location. Members are no longer 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. Nothing prohibits additional locations, where only the public is connected to the teleconference meeting. (§11123(b)(2))

## **VI. DELIBERATIONS AND VOTING**

Keep in mind the Open Meeting Act declaration of legislative intent that actions of state agencies be taken openly and that their deliberation be conducted openly. (§11120) In this regard, there are a number of provisions in the Open Meeting Act which address deliberations and voting.

### **A. Seriatim Calls to Individual Agency Members Prohibited**

Except as authorized by the above-discussed teleconferencing statutes, telephone conference calls may not be used to avoid the requirements of the Open Meeting 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 teleconference meeting.

In a case involving the Ralph M. Brown Act, the court concluded that 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) The Brown Act is the local agency counterpart to the Bagley-Keene Open Meeting Act, and decisions rendered on its provisions are frequently followed in Open Meeting Act cases.

Citing the *Stockton Newspapers, Inc.* case, the court in *Sutter Bay Associates v. County of Sutter* held that to prevent evasion of the Brown Act, a series of private meetings (known as serial meetings) by which a majority of the members of the legislative body commit themselves to a decision concerning public business or engage in collective deliberation on public business would violate the open meeting requirement. ((1997) 58 Cal.App.4<sup>th</sup> 860, 877, 68 Cal.Rptr.2d 492, 502)

Effective January 1, 2010, the Act now specifically prohibits 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." (Emphasis added.)

## **B. E-Mail Prohibition**

AB 192 of 2001 added subdivision (b) to section 11122.5 to provide:

"Except as authorized pursuant to Section 11123, any use of direct communication, personal intermediaries, or technological devices that is employed by a majority of the members of the state body to develop a collective concurrence as to action to be taken on an item by the members of the state body is prohibited."

The enactment of subdivision (b) of section 11122.5, expands upon and confirms a recent opinion of the Attorney General prohibiting the use of e-mail to reach a collective decision outside a regularly scheduled meeting. In 84 Ops.Cal.Atty.Gen. 30, the Attorney General concluded that:

"A majority of the board members of a local public agency may not e-mail each other to develop a collective concurrence as to action to be taken by the board without violating the Ralph M. Brown Act even if the e-mails are also sent to the secretary and chairperson of the agency, the e-mails are posted on the agency's Internet website, and a printed version of each e-mail is reported at the next public meeting of the board."

As noted above, interpretations of the Brown Act, which governs local public agencies, are often cited as authority in interpreting similar provisions of the Bagley-Keene Open Meeting Act.

Members of a board 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 board.

## **C. Secret Ballot Prohibited**

An agency 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.

## **D. Voting by Proxy Prohibited**

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

### **E. Use of Electronic Devices During Meeting**

Board members should not text or email each other during an open meeting on any matter within the board's jurisdiction. Using electronic devices to communicate secretly on such a matter would violate the law. 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."

### **F. Voting by Mail on Administrative Disciplinary Matters**

As a general rule, all voting on items of business to be transacted must be done at a public meeting. However, the Administrative Procedure Act authorizes mail voting on all questions arising under that act. (Govt. Code §11526.) Thus, board members may vote by mail on proposed decisions, stipulated decisions, and other matters in connection with a formal disciplinary case. No other votes may be cast by mail. (68 Ops.Cal.Atty.Gen. 65, 69)

## **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. Conforming Board Member's Conduct**

Any person who has been appointed as a member of a state body, who has not yet assumed the duties of the office, must conform his or her conduct to the provisions of the Open Meeting Act. (§11125.95)

### **B. Providing Open Meeting Act to New Board Members**

A copy of the Bagley-Keene Open Meeting Act must be provided to each agency member upon his or her appointment to office. Each agency should insure that a copy is given to each new member. (§11121.9.)

### **C. 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 himself or herself for the board's record or

minutes, a commenter cannot be compelled to do so or prevented from speaking because the commenter refuses to identify himself 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 Open Meeting Act prohibits holding a meeting in any location where the public is required to pay a fee or make a purchase to attend. (§11131)

## **D. 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))

## **E. Public's Right to Record the Proceedings**

Persons attending a public meeting have a right to record the proceedings with an audio or video tape recorder or still or motion picture camera, in the absence of a reasonable finding by the agency that the recording could not continue without noise, illumination, or obstruction of view that constitutes, or would constitute, a persistent disruption of the proceedings. (§11124.1(a))

## **F. Media Broadcast of the Proceedings**

A state body may not prohibit or otherwise restrict the broadcast of a public meeting 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. (§11124.1(c))

### **G. Webcasting**

While webcasting is not required, if you plan to webcast your meeting, we encourage you to place the following statement on your agenda:

"While the board intends to webcast this meeting, it may not be possible to webcast the entire open meeting due to limitations on resources."

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

Items listed on the agenda may be taken up out of order, provided the purpose of moving the agenda items is not to frustrate public or other input 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.

If your agency 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 other input.

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

Section 11125.7 addresses the subject of public comment at board meetings. With specified exceptions, that section requires state agencies to provide an opportunity for members of the public to directly address the state agency on each agenda item before or during the agency's discussion or consideration of the item. This opportunity for comment need not be made available if:

1. 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.
2. The agenda item is one that may properly be considered in closed session, which would include deliberation and action on disciplinary proceedings under the Administrative Procedure Act. (§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 an administrative regulation. (§11125.7(b))

The law specifically provides that 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 all, 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 agency members. (§11125.1(a)) Records exempt from disclosure under Sections 6253.5, 6254 or 6254.7 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 investigation files, except for Accusations and Proposed Decisions, and any records or data relating to examinations.

### **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**

Under section 11126.7, an agency may not charge a fee for a notice, including the agenda, of a meeting, and may only charge those fees specifically authorized for public documents that are considered at the meeting

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 an agency 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))

Effective January 1, 2003, 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**

Under previous law, any interested person could commence court action (mandamus, injunction, declaratory relief) to stop or prevent violations or threatened violations of the Open Meeting Act. SB 95, effective 1/1/98, added the Attorney General and the district attorney to the list of those who may commence such action. 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)

SB 95 also expanded the law to authorize the Attorney General, a district attorney, or any interested person to 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.

SB 95 further expanded the law to authorize 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 of Section 11126, a court could so compel an agency. Discovery procedures for the tape recordings are also set forth. (§11130(b), and (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 also 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) and 11130.3(a)).

Section 11130.7 of the Act provides:

"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."  
(Emphasis added.)

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### **11120. Public policy; legislative finding and declaration; citation of article**

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.

(Added by Stats.1967, c. 1656, p. 4026, § 122. Amended by Stats.1980, c. 1284, p. 4333, § 4; Stats. 1981, c. 968, p. 3683, § 4.)

### **11121. State body defined**

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.

(Added by Stats.1967, c. 1656, p. 4026, § 122. Amended by Stats.1980, c. 515, § 1; Stats.1981, c. 968, p. 3683, § 5; Stats.1984, c. 193, § 38. Amended by Stats.1996, c. 1023 (S.B.1497), § 88, eff. Sept. 29, 1996; Stats.1996, c. 1064 (A.B.3351), § 783.1, operative July 1, 1997; Stats.2001, c. 243 (A.B.192), § 1; Amended Stats. 2003 ch 62 § 117 (SB 600)).



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### **11121.1. State body; exclusions**

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

(a) 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.

(Added by Stats.2001, c. 243 (A.B.192), § 2. Amended by Stats. 2008, c. 344 (S.B. 1145), § 2, eff. Sept. 26, 2008.)

### **11121.2. Repealed by Stats. 2001, c. 243 (A.B.192), § 3**

The repealed section, added by Stats.1981, c. 968, p. 3684, § 5.2, related to multimember body with authority from state body.

### **11121.7. Repealed by Stats. 2001, c. 243 (A.B.192), § 4**

The repealed section, added by Stats.1980, c. 1284, p. 4333, § 5, amended by Stats.1981, c. 968, p. 3685, § 6, related to representatives of the state body.

### **11121.8. Repealed by Stats. 2001, c. 243 (A.B.192), § 5**

The repealed section, added by Stats.1981, c. 968, p. 3684, § 7, related to advisory bodies.

### **11121.9. Provision of copy of article to members of state body**

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.

(Added by Stats.1980, c. 1284, p. 4334, § 6. Amended by Stats.1981, c. 714, p. 2659, § 175; Stats.1981, c. 968, p. 3685, § 7.1.)

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### **11121.95. Appointees or elected officials not yet in office; conformity of conduct to article requirements**

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, c. 949 (S.B.95), § 1.)

### **11122. Action taken**

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.

(Added by Stats.1967, c. 1656, p. 4026, § 122.  
Amended by Stats.1981, c. 968, p. 3685, § 7.3.)

### **11122.5. Meeting defined; series of communications to discuss, deliberate, or take action prohibited; exceptions**

(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

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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.

(Added by Stats.2001, c. 243 (A.B.192), § 6.  
Amended by Stats.2009, c. 150 (A.B.1494), § 1.)

### **11123. Meetings; attendance; teleconference option**

(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

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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.

(Added by Stats.1967, c. 1656, p. 4026, § 122. Amended by Stats.1981, c. 968, p. 3685, § 7.5. Amended by Stats.1994, c. 1153 (A.B.3467), § 1; Stats.1997, c. 52 (A.B.1097), § 1; Stats.2001, c. 243 (A.B.192), § 7.)

### **11123.1. State body meetings to meet protections and prohibitions of the Americans with Disabilities Act**

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, c. 300 (A.B. 3035), § 1.)

### **11124. Conditions to attendance**

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

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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.

(Added by Stats.1967, c. 1656, p. 4026, § 122.  
Amended by Stats.1981, c. 968, p. 3685, § 8.)

### **11124.1. Audio or video recording of proceedings; inspection of state's recording; broadcast restrictions**

(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.

(Added by Stats.1980, c. 1284, p. 4334, § 7.  
Amended by Stats.1981, c. 968, p. 3685, § 9;  
Stats.1997, c. 949 (S.B.95), § 2; Stats.2009, c. 88 (A.B.176), § 42.)

### **11125. Notice of meeting**

(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

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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.

(Added by Stats.1967, c. 1656, p. 4026, § 122. Amended by Stats.1973, c. 1126, p. 2291, § 1; Stats.1975, c. 708, p. 1695, § 1; Stats.1979, c. 284, § 1, eff. July 24, 1979; Stats.1981, c. 968, p. 3685, § 10. Amended by Stats.1997, c. 949 (S.B.95), § 3; Stats.1999, c. 393 (A.B.1234), § 1; Stats.2001, c. 243 (A.B.192), § 8; Stats. 2002, c. 300 (A.B. 3035), § 2.)

**11125.1. Agendas and other writings distributed for discussion or consideration at public meetings; public records; Franchise Tax Board; inspection; availability on the Internet; closed sessions**

(a) Notwithstanding Section 6255 or any other provisions of law, agendas of public meetings and other writings,

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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 American 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 to members of the state body by the Franchise Tax

Board staff or individual members 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

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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.

(Added by Stats.1975, c. 959, p. 2238, § 4. Amended by Stats.1980, c. 1284, p. 4334, § 8; Stats.1981, c. 968, p. 3686, § 10.1. Amended by Stats.1997, c. 949 (S.B.95), § 4; Stats.2001, c. 670 (S.B.445), § 1; Stats. 2002, c. 300 (A.B. 3035), § 3.5.; Stats. 2005, c. 188 (A.B. 780), § 1.)

### **11125.2. Appointment, employment or dismissal of public employees; closed sessions; public report**

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.

(Added by Stats.1980, c. 1284, p. 4335, § 9. Amended by Stats.1981, c. 968, p. 3687, § 10.3.)

### **11125.3. Action on items of business not appearing on agenda; notice**

(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



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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.

(Added by Stats.1994, c. 1153 (A.B.3467), § 2.  
Amended by Stats.2001, c. 243 (A.B.192), § 9.)

### **11125.4. Special meetings; authorized purposes; notice; required finding of hardship or need to protect public interest**

(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 where compliance with the 10-day notice provisions of Section 11125 would impose a substantial hardship on the state body or where 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

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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.

(Added by Stats.1997, c. 949 (S.B.95), § 5.  
Amended by Stats.1999, c. 393 (A.B.1234), § 2;  
Stats.2004, c. 576 (A.B.1827), § 1.; Stats. 2007,  
c. 92 (S.B. 519), § 1.)

### **11125.5. Emergency meetings**

(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.

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(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.1992, c. 1312 (A.B.2912), § 11, eff. Sept. 30, 1992; Stats.1997, c. 949 (S.B.95), § 6; Stats.1999, c. 393 (A.B.1234), § 3.)

### **11125.6. Fish and Game Commission; emergency meetings;**

#### **appeals of fishery closures or restrictions**

(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

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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, c. 1052 (A.B. 1241), S 21.)

**11125.7. Agenda item discussion before state body; opportunity for public address; regulation by state body; freedom of expression; application of provisions**

(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, provided, however, that 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

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particular issues and for each individual speaker.

(c) 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.

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

(e) 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.

(f) This section is not applicable to hearings conducted by the California Victim Compensation and Government Claims board pursuant to Sections 13963 and 13963.1.

(g) 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.

(Added by Stats. 1993, c. 1289 (S.B. 367), § 2. Amended by Stats. 1995, c. 938 (S.B. 523), § 13, operative July 1, 1997; Stats. 1997, c. 949 (S.B. 95), § 7.; Stats. 2006, c. 538 (S.B. 1852), § 248.)

### **11125.8. Hearings to consider crimes against minors or crimes of sexual assault or domestic violence; identification of applicant; disclosure of nature of hearing**

(a) Notwithstanding Section 11131.5, in any hearing that the State California Victim Compensation and Government Claims 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.

(Added by Stats. 1997, c. 949 (S.B. 95), § 9.; Stats. 2006, c. 538 (S.B. 1852), § 249.)

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### **11125.9. Regional water quality control boards; compliance with notification guidelines**

(Added by Stats.1997, c. 301 (A.B.116), § 1.)

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.

### **§ 11126. Closed sessions.**

(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

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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.

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(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 California Integrated Waste Management Board 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



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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

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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.

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(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,

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or other body appointed to advise the Secretary of Emergency Management 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

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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.

(Added by Stats.1967, c. 1656, p. 4026, § 122. Amended by Stats.1968, c. 1272, p. 2396, § 1; Stats.1970, c. 346, p. 741, § 5; Stats.1972, c. 431, p. 791, § 43; Stats.1972, c. 1010, p. 1872, § 63, eff. Aug. 17, 1972, operative July 1, 1972; Stats.1974, c. 1254, p. 2713, § 1; Stats.1974, c. 1539, p. 3525, § 1; Stats.1975, c. 197, p. 570, § 1; Stats.1975, c. 959, p. 2238, § 5; Stats.1977, c. 730, p. 2318, § 5, eff. Sept. 12, 1977; Stats.1980, c. 1197, p. 4043, § 1; Stats.1980, c. 1284, p. 4338, § 11; Stats.1981, c. 180, p. 1096, § 1; Stats.1981, c. 968, p. 3688, § 12; Stats.1982, c. 454, p. 1842, § 40; Stats.1983, c. 143, § 187; Stats.1984, c. 678, § 1; Stats.1984, c. 1284, § 4; Stats.1985, c. 186, § 1; Stats.1985, c. 1091, § 1; Stats.1986, c. 575, § 1; Stats.1987, c. 1320, § 2; Stats.1988, c. 1448, § 29; Stats.1989, c. 177, § 2; Stats.1989, c. 882, § 2; Stats.1989, c. 1360, § 52; Stats.1989, c. 1427, § 1, eff. Oct. 2, 1989, operative Jan. 1, 1990; Stats.1991, c. 788 (A.B.1440), § 4; Stats.1992, c. 1050 (A.B.2987), § 17; Stats.1994, c. 26 (A.B.1807), § 230, eff. March 30, 1994; Stats.1994, c. 422 (A.B.2589), § 15.5, eff. Sept. 7, 1994; Stats.1994, c. 845 (S.B.1316), § 1; Stats.1995, c. 975 (A.B.265), § 3; Stats.1996, c. 1041 (A.B.3358), § 2; Stats.1997, c. 949 (S.B.95), § 8; Stats.1998, c. 210 (S.B.2008), § 1; Stats.1998, c. 972 (S.B.989), § 1; Stats.1999, c. 735 (S.B.366), § 9, eff. Oct. 10, 1999; Stats.2000, c. 1002 (S.B.1998), § 1; Stats.2000, c. 1055 (A.B.2889), § 30, eff. Sept. 30, 2000; Stats.2001, c. 21 (S.B.54), § 1, eff. June 25, 2001; Stats.2001, c. 243 (A.B.192), § 10;

Stats.2002, c. 664 (A.B.3034), § 93.7; Stats.2002, c. 1113 (A.B.2072), § 1; Stats.2005, c. 288 (A.B.277), § 1; Stats.2007, c. 577 (A.B.1750), § 4, eff. Oct. 13, 2007; Stats.2008, c. 179 (S.B.1498), § 91; Stats.2008, c. 344 (S.B.1145), § 3, eff. Sept. 26, 2008; Stats.2010, c. 328 (S.B.1330), § 81; Stats.2010, c. 32 (A.B.1887), § 2, eff. June 29, 2010; Stats. 2010, c. 618 (AB 2791), § 124; Stats. 2011, c. 357 (AB 813), § 1.)

### **11126.1. Record of topics discussed and decisions made at closed sessions; availability**

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.

(Added by Stats.1980, c. 1284, p. 4340, § 12. Amended by Stats.1981, c. 968, p. 3691, § 13.)

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### **11126.2. Closed session; response to confidential final draft audit report; public release of report**

(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, c. 576 (A.B.1827), § 2.)

### **11126.3. Disclosure of nature of items to be discussed in closed session; scope of session; notice of meeting; announcement of pending litigation; unnecessary disclosures; disclosures at open session following closed session**

(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,

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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.

(Added by Stats.1980, c. 1284, p. 4341, § 13. Amended by Stats.1981, c. 968, p. 3692, § 14; Stats.1987, c. 1320, § 3. Amended by Stats.1997, c. 949 (S.B.95), § 10; Stats.1998, c. 210 (S.B.2008), § 2; Stats.2001, c. 243 (A.B.192), § 11.)

### **11126.4. Closed sessions of Gambling Control Commission; information prohibited from being disclosed by law or tribal-state gaming compact; limitations; public notice**

(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.

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

(Added by Stats. 2005, c. 274 (S.B. 919), § 1.)

### **11126.5. Disorderly conduct of general public during meeting; clearing of room**

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.

(Added by Stats. 1970, c. 1610, p. 3385, § 1.  
Amended by Stats. 1981, c. 968, p. 3692, § 15.)

### **11126.7. Fees**

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.

(Added by Stats. 1980, c. 1284, p. 4341, § 14.  
Amended by Stats. 1981, c. 968, p. 3692, § 16.)

### **11127. Application of article**

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.

(Added by Stats. 1967, c. 1656, p. 4026, § 122.  
Amended by Stats. 1981, c. 968, p. 3692, § 17.)

### **11128. Time of closed session**

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

(Added by Stats. 1967, c. 1656, p. 4026, § 122.  
Amended by Stats. 1980, c. 1284, p. 4341, § 15;  
Stats. 1981, c. 968, p. 3692, § 18.)

### **11128.5. Adjournment; declaration; notice; hour for reconvened meeting**

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



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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, c. 949 (S.B.95), § 11.)

### **11129. Continuance; posting notice**

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.

(Added by Stats.1967, c. 1656, p. 4026, § 122.  
Amended by Stats.1981, c. 968, p. 3692, § 19.  
Amended by Stats.1997, c. 949 (S.B.95), § 12.)

### **11130. Actions to prevent violations or determine applicability of article; validity of rules discouraging expression; audio recording of closed sessions; discovery procedures for recordings**

(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.

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(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.

(Added by Stats.1967, c. 1656, p. 4026, § 122. Amended by Stats.1969, c. 494, p. 1106, § 1; Stats.1981, c. 968, p. 3693, § 20; Stats.1997, c. 949 (S.B.95), § 13; Stats.1999, c. 393 (A.B.1234), § 4; Stats.2009, c. 88 (A.B.176), §

## BAGLEY-KEENE OPEN MEETING ACT - 2012

43.)

### **11130.3. Judicial determination action by state body in violation of §§ 11123 or 11125 null and void; action by interested person; grounds**

(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, c. 393 (A.B.1234), § 5.)

### **11130.5. Court costs and attorney fees**

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.

(Added by Stats.1975, c. 959, p. 2240, § 6. Amended by Stats.1981, c. 968, p. 3693, § 21; Stats.1985, c. 936, § 2.)

### **11130.7. Violations; misdemeanor**

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

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to know the public is entitled under this article, is guilty of a misdemeanor.

(Added by Stats.1980, c. 1284, p. 4341, § 16.  
Amended by Stats.1981, c. 968, p. 3693, § 22.  
Amended by Stats.1997, c. 949 (S.B. 95), § 14.)

### **11131. Use of facility allowing discrimination; state agency**

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.

(Added by Stats.1970, c. 383, p. 798, § 1.  
Amended by Stats.1981, c. 968, p. 3693, § 23.  
Amended by Stats.1997, c. 949 (S.B.95), § 15.;  
Stats. 2007, c. 568 (A.B. 14), § 32.)

### **11131.5. Identity of victims or alleged victims of crimes, tortious sexual conduct, or child abuse; public disclosure**

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, c. 949 (S.B.95), § 16.)

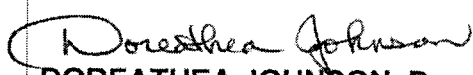
### **11132. Closed session by state body prohibited**

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

(Added by Stats.1987, c. 1320, § 4.)



## MEMORANDUM

<b>DATE</b>	<b>February 13, 2013</b>
<b>TO</b>	<b>EXECUTIVE OFFICERS, EXECUTIVE DIRECTORS, REGISTRARS</b>
<b>FROM</b>	 <b>DOREATHEA JOHNSON, Deputy Director, Legal Affairs Division</b>
<b>SUBJECT</b>	<b>Procedures on Petition for Reinstatement (or Modification) Decisions</b>

This memo outlines suggested procedures for developing and finalizing a decision of the Board during and after hearing a petition for reinstatement (or modification or early termination of probation, all referred to here as "petition") when the petition was heard by the Board sitting with an Administrative Law Judge (ALJ).

After the hearing in open session, the Board deliberates in closed session with the ALJ and, if requested by the Board or required by board policy, assigned legal counsel<sup>1</sup>. The Board develops and votes on a decision, and legal counsel advises the Board with respect to legal issues involved, such as requirements for licensure, what the Disciplinary Guidelines propose, and consistency with other Board decisions and orders. The ALJ has the task of writing the decision (which is not a proposed decision) for the Board consistent with its discussion and decision. This decision is sent to the board offices, where it is processed by the board staff.

The Legal Office understands that boards often simply send the decision to the Board president for signature. Because of the similarities to the process for decisions after non-adopt, however, which require that the Board review the decision before it becomes final, the Legal Office recommends the following process for finalizing a decision on a petition:

1. Upon receipt of the decision from the ALJ, the Board staff who was present for the closed session discussion should review the decision for any obvious errors or omissions.

<sup>1</sup> Board staff necessary to render a decision may also be present as discussed in my memorandum regarding Closed Session Protocols dated December 17, 2010.

2. Staff sends the decision to assigned legal counsel, noting any of the errors or omissions found.
3. Legal counsel reviews the decision, and drafts a memo to the Board regarding recommended changes, if any, based upon the deliberations and vote of the Board in closed session. Legal counsel sends the memo and the revised decision to the board staff for circulation to the voting Board members, describing the process to be followed. The memo will advise the Board to the effect of the following:

"Attached is the above-referenced decision on the petition for [name] for [name]. It is a [Word] [pdf] [other] document.

"Please review the document carefully to ensure that it accurately reflects the board's decision. If you do not believe that it accurately reflects the Board's decision, please email me (only) no later than close of business on [date]. If I do not receive a reply from you by that date, the assumption is that you agree with the way the decision is written. The biggest changes to the way in which the ALJ wrote the decision are: [describe].

"Process:

"If a Board member informs me that the decision does not accurately reflect the Board's decision, I will contact that person. If, after contacting that person, I agree that there is an error in the decision, I will revise the decision and send it out to everyone again. Look for any revisions the following day, and please respond by the date indicated on the email. Otherwise the assumption is that you agree with the way the decision is written. Staff will then send the decision back to the president for final review and signature.

"Let me know if you have any questions or changes."

There may be times in which legal counsel does not sit in closed session. In those cases, staff should not forward the decision to counsel for initial review. Staff should, however, closely review the decision for any errors and omissions. If any errors or omissions are noted, staff should contact legal counsel to determine how the discrepancy should be handled.

As a related matter, any decision regarding the presence of legal counsel in closed session is a decision of the Board. This office is aware of instances in which either an ALJ or board staff has questioned the presence of legal counsel during deliberations after a hearing on a petition. In the event of a question being raised regarding legal counsel's presence in closed session, counsel will ask the Board for a consensus as to whether his or her presence would be helpful to assist the Board with legal issues, and will abide by that consensus. In order to avoid uncertainty when there are new ALJs, staff, or Board members, the Board can consider adopting a policy approving the

Petition for Reinstatement Procedures  
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presence of legal counsel in closed session. This office can help draft such a policy, if requested.

The Legal Office recommends that your Board begin to use the process described for finalizing decisions from the ALJs on any petitions, if you haven't already done so. Please let your assigned attorney know if you have any questions.

cc: Legal Affairs Attorneys

The Department of Consumer Affairs (DCA) oversees a wide variety of autonomous Boards and Bureaus that certify, register, and license individuals and entities that provide goods and/or services in the state. The overall purpose of the DCA is to promote a fair and competitive marketplace in which consumers are protected. The DCA provides consumers and licensees with valuable information and training and processes and mediates complaints. When appropriate, cases are referred to the Attorney General's office or law enforcement authorities for administrative action, civil and/or criminal prosecution.

### **Background**

Executive Order B-13-11 requires the Department of Finance (DOF) to work in conjunction with various departments to utilize performance-based budgeting to increase efficiency and focus on accomplishing program goals. As a result, the DCA has identified a variety of ways to measure enforcement efforts for all Boards and Bureaus. Performance-based budgeting provides the DCA the flexibility to manage its resources based on fluctuating program demand.

### **Performance Measures**

To ensure stakeholders can review the progress of DCA's Boards and Bureaus in meeting their enforcement goals and targets, DCA has developed a transparent system of performance measurements. These measures are critical, particularly during the current climate of budget constraints, for demonstrating that DCA is making and will continue to make the most efficient and effective use possible of its resources. These measures are posted publically to the Department website on a quarterly basis.

The DCA will assess enforcement needs based on the following criteria:

- *Intake Cycle Time - Average number of days from receipt of the complaint to the date the complaint was assigned for investigation;*
- *Investigation Cases - Average number of days from receipt of the complaint to closure of the investigation process. Does not include cases resulting in formal discipline.*
- *Formal Discipline Cases - Average number of days to complete the entire enforcement process for cases referred to the Attorney General's office for formal discipline.*

The following budget display represents a snapshot of existing enforcement efforts of the Boards and Bureaus within the DCA. This information will act as a baseline of enforcement performance and will allow for the tracking of future performance.

#### **1. Intake Cycle Time**

The following represents the total number of cases assigned for investigation and the average number of days (cycle time) from receipt of a complaint to the date the complaint was assigned for investigation. This data assists DCA and the program in measuring the efficiency of the program's internal complaint intake process.



1110/1111 - Department of Consumer Affairs

1110 - Department of Consumer Affairs Regulatory Boards						
Program		FY 2010-11		FY 2011-12		FY 2012-13 (Target)
		# of Cases	Avg. Cycle Time (Days)	# of Cases	Avg. Cycle Time (Days)	Avg. Cycle Time (Days)
03	California Board of Accountancy	836	5	1,920	4	10
06	California Architects Board	285	2	211	3	7
09	State Athletic Commission	NA	NA	NA	NA	NA
18	Board of Behavioral Sciences	1,981	4	1,915	4	5
22	Board of Barbering and Cosmetology	NA	NA	5,470	3	10
30	Contractors' State License Board	NA	NA	NA	NA	3
36	Dental Board of California	3,700	13	3,575	9	10
47	Dental Hygiene Committee	126	26	221	4	30
54	State Board of Guide Dogs for the Blind	NA	NA	NA	NA	NA
55	Medical Board of California	NA	NA	NA	NA	9
56	Acupuncture Board	225	9	107	8	10
58	Physical Therapy Board	1,806	6	1,819	5	5
59	Physician Assistant Committee	268	8	276	12	10
61	California Board of Podiatric Medicine	91	10	135	12	9
62	Board of Psychology	790	6	743	5	9
64	Respiratory Care Board	835	3	875	2	7
65	Speech-Language Pathology and Audiology and Hearing Aid Dispensers Board	239	1	197	5	3
67	California Board of Occupational Therapy	683	1	541	3	2
69	State Board of Optometry	260	5	351	75	7
70	Osteopathic Medical Board of California	413	28	362	9	30
71	Naturopathic Medicine Committee	NA	NA	NA	NA	10
72	California State Board of Pharmacy	3,906	23	3,963	25	20
75	Board of Professional Engineers and Land Surveyors	38	899	45	959	10
78	Board of Registered Nursing	8,063	16	8,084	15	15
81	Court Reporters Board of California	NA	NA	NA	NA	5
90	Veterinary Medical Board	733	33	732	26	10
91	Board of Vocational Nursing and Psychiatric Technicians of the State of California	5,163	26	5,561	16	30

1110/1111 – Department of Consumer Affairs

1111 - Department of Consumer Affairs Bureaus, Programs, and Divisions						
Program		FY 2010-11		FY 2011-12		FY 2012-13 (Target)
		# of Cases	Avg. Cycle Time (Days)	# of Cases	Avg. Cycle Time (Days)	Avg. Cycle Time (Days)
25	Bureau of Security and Investigative Services	NA	NA	NA	NA	10
27	Bureau for Private Postsecondary Education	NA	NA	NA	NA	NA
28	Bureau of Electronic and Appliance Repair, Home Furnishings, and Thermal Insulation	2,161	6	1,912	8	10
31	Bureau of Automotive Repair	18,527	4	19,083	4	7
38	Cemetery and Funeral Bureau	769	2	738	3	7
89	Professional Fiduciaries Bureau	89	35	102	12	5

**2. Intake and Investigation Cycle Time**

The following represent the total number of cases investigated and the average number of days (cycle time) from receipt of a complaint to the closure of the investigation. This data assists DCA and the program in measuring how efficient a program is in addressing a violation of the Board's statutes and regulations. This measure does not include cases referred to the Attorney General's office.

1110 - Department of Consumer Affairs Regulatory Boards						
Program		FY 2010-11		FY 2011-12		FY 2012-13 (Target)
		# of Cases	Avg. Cycle Time (Days)	# of Cases	Avg. Cycle Time (Days)	Avg. Cycle Time (Days)
03	California Board of Accountancy	438	114	1,473	73	180
06	California Architects Board	288	216	278	148	270
09	State Athletic Commission	NA	NA	NA	NA	NA
18	Board of Behavioral Sciences	1,826	126	1,836	126	180
22	Board of Barbering and Cosmetology	NA	NA	5,598	71	120
30	Contractors' State License Board	NA	NA	NA	NA	180
36	Dental Board of California	3,833	167	3,291	156	270
47	Dental Hygiene Committee	118	108	218	45	120
54	State Board of Guide Dogs for the Blind	NA	NA	NA	NA	NA
55	Medical Board of California	NA	NA	NA	NA	125
56	Acupuncture Board	180	155	131	164	200
58	Physical Therapy Board	1,555	70	1,638	55	90
59	Physician Assistant Committee	233	74	226	100	150

1110/1111 - Department of Consumer Affairs

1110 - Department of Consumer Affairs Regulatory Boards						
Program		FY 2010-11		FY 2011-12		FY 2012-13 (Target)
		# of Cases	Avg. Cycle Time (Days)	# of Cases	Avg. Cycle Time (Days)	Avg. Cycle Time (Days)
61	California Board of Podiatric Medicine	97	145	114	142	125
62	Board of Psychology	591	64	590	71	80
64	Respiratory Care Board	793	116	753	90	210
65	Speech-Language Pathology and Audiology and Hearing Aid Dispensers Board	247	233	147	277	90
67	California Board of Occupational Therapy	716	135	554	79	270
69	State Board of Optometry	174	89	233	184	90
70	Osteopathic Medical Board of California	258	245	403	234	360
71	Naturopathic Medicine Committee	NA	NA	NA	NA	90
72	California State Board of Pharmacy	3,330	229	2,964	222	210
75	Board of Professional Engineers, and Land Surveyors	13	787	26	1,147	360
78	Board of Registered Nursing	5,340	113	4,946	122	100
81	Court Reporters Board of California	NA	NA	NA	NA	NA
90	Veterinary Medical Board	417	264	566	311	365
91	Board of Vocational Nursing and Psychiatric Technicians of the State of California	5,315	288	5,202	275	360

1111 - Department of Consumer Affairs Bureaus, Programs, and Divisions						
Program		FY 2010-11		FY 2011-12		FY 2012-13 (Target)
		# of Cases	Avg. Cycle Time (Days)	# of Cases	Avg. Cycle Time (Days)	Avg. Cycle Time (Days)
25	Bureau of Security and Investigative Services	NA	NA	NA	NA	200
27	Bureau for Private Postsecondary Education	NA	NA	NA	NA	NA
28	Bureau of Electronic and Appliance Repair, Home Furnishings, and Thermal Insulation	2,290	66	1,870	67	180
31	Bureau of Automotive Repair	17,869	46	17,797	45	60
38	Cemetery and Funeral Bureau	737	41	727	46	120
89	Professional Fiduciaries Bureau	90	225	92	126	365

1110/1111 – Department of Consumer Affairs

**3. Formal Discipline Cycle Time**

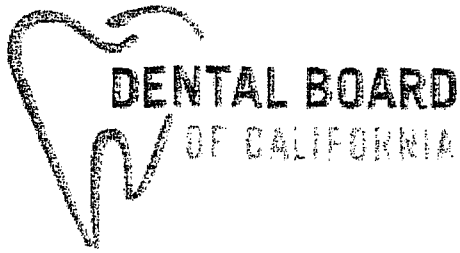
The following represent the formal discipline cases closed by the Attorney General's office after referral by the program. The cycle time in this measure includes intake and investigation by the program, and review and possible prosecution by the Attorney General's office. This data assists DCA in measuring the efficiency of the program's investigation process, and the effectiveness of their partnership with the AG's office.

1110 – Department of Consumer Affairs Regulatory Boards						
Program		FY 2010-11		FY 2011-12		FY 2012-13 (Target)
		# of Cases	Avg. Cycle Time (Days)	# of Cases	Avg. Cycle Time (Days)	Avg. Cycle Time (Days)
03	California Board of Accountancy	27	782	28	787	540
06	California Architects Board	4	688	2	514	540
09	State Athletic Commission	NA	NA	NA	NA	NA
18	Board of Behavioral Sciences	91	793	84	872	540
22	Board of Barbering and Cosmetology	NA	NA	109	469	540
30	Contractors' State License Board	NA	NA	NA	NA	540
36	Dental Board of California	117	929	124	928	540
47	Dental Hygiene Committee	5	776	3	576	540
54	State Board of Guide Dogs for the Blind	NA	NA	NA	NA	NA
55	Medical Board of California	NA	NA	NA	NA	540
56	Acupuncture Board	21	654	20	582	540
58	Physical Therapy Board	56	720	44	654	540
59	Physician Assistant Committee	23	614	21	524	540
61	California Board of Podiatric Medicine	3	660	7	1,065	540
62	Board of Psychology	19	895	29	894	540
64	Respiratory Care Board	65	593	77	625	540
65	Speech-Language Pathology and Audiology and Hearing Aid Dispensers Board	9	657	16	1,055	540
67	California Board of Occupational Therapy	12	742	20	594	540
69	State Board of Optometry	7	698	7	879	365
70	Osteopathic Medical Board of California	14	1095	17	884	540
71	Naturopathic Medicine Committee	NA	NA	NA	NA	NA
72	California State Board of Pharmacy	257	875	264	932	540
75	Board of Professional Engineers and Land Surveyors	0	0	0	0	540

1110/1111 – Department of Consumer Affairs

1110 – Department of Consumer Affairs Regulatory Boards						
Program		FY 2010-11		FY 2011-12		FY 2012-13 (Target)
		# of Cases	Avg. Cycle Time (Days)	# of Cases	Avg. Cycle Time (Days)	Avg. Cycle Time (Days)
78	Board of Registered Nursing	766	722	728	677	540
81	Court Reporters Board of California	NA	NA	NA	NA	NA
90	Veterinary Medical Board	29	972	28	978	740
91	Board of Vocational Nursing and Psychiatric Technicians of the State of California	192	1,083	250	1,107	540

1111 - Department of Consumer Affairs Bureaus, Programs, and Divisions						
Program		FY 2010-11		FY 2011-12		FY 2012-13 (Target)
		# of Cases	Avg. Cycle Time (Days)	# of Cases	Avg. Cycle Time (Days)	Avg. Cycle Time (Days)
25	Bureau of Security and Investigative Services	NA	NA	NA	NA	360
27	Bureau for Private Postsecondary Education	NA	NA	NA	NA	NA
28	Bureau of Electronic and Appliance Repair, Home Furnishings, and Thermal Insulation	14	711	8	1,076	270
31	Bureau of Automotive Repair	789	569	714	525	540
38	Cemetery and Funeral Bureau	18	587	17	544	540
89	Professional Fiduciaries Bureau	1	1,128	3	606	540



## 2012 Dental Board SWOT Analysis

One of the first steps in developing a strategic plan is to conduct a SWOT analysis of the environment in which an organization operates. A SWOT analysis allows us to take a look at the factors that can impact our Board's success. These factors fall into two environments, internal factors and external factors. The internal factors working both for and against an organization are its STRENGTHS(S) and WEAKNESSES(W). The external factors that may impact an organization from the outside are identified as OPPORTUNITIES(O) and THREATS(T).

Attached are the results of the SWOT analysis recently conducted for the Dental Board. The methods used to collect this information included the following:

- Focus group discussion held with **Board Managers** and executive leaders held on September 25, 2012.
- Online survey to **Board Members, Dental Assisting Counsel Members** and other identified **Dental Board Stakeholders** completed during the month of October 2012. 32 responses were received.

The attached represents the compiled results of this assessment, divided by source. The grouping structure in which these comments are organized was determined by SOLID.

The priority and emphasis of comments gathered at the Board Manager focus group are indicated with a check (✓) symbol. A greater number of checks indicate a higher level of perceived importance from those managers who participated in the discussion.



## ORGANIZATIONAL STRENGTHS

### Board Member Feedback

#### Board Staff and Leadership

- The current staff has the leadership which was needed at a critical time.
- Strong executive staff
- Experienced executive staff
- Dedicated and engaged Executive Officer and staff with many years of experience.
- Experienced staff
- The managerial staff works well together.
- A strong sense of "Teamwork" demonstrated by all stakeholders (EO, staff and members of the Board)
- The executive staff tracks issues and develops priorities to maintain board effectiveness. This was not always done in the past. Staff develops an agenda format that allows board members to make decisions on issues in an organized way. This allows the board to be more decisive.
- I experience a dedicated group of individuals that are engaged in the work of the Board and not just there to receive a paycheck. The leadership of the Board, as represented by the attitudes and actions of its Executive Officer, his Special Assistant, and the Officers of the Board is, in my opinion, is very "Values Based". Because of those high values, both verbalized and demonstrated, the remaining members of the team also demonstrate a high level of moral, ethical, and professional values. I am proud and honored to be a member of the Dental Board of California.

#### Board Members

- Well rounded representation of skills, knowledge and abilities of the members of the Dental Board.
- Engaged Board
- Strong leadership in the current Board President
- Engaged and involved board members
- Well informed and engaged board members
- A healthy respect for each other's opinions, even when we do not agree.

#### Enforcement Program

- Outstanding enforcement program
- There are great improvements in the enforcement section.
- Enforcement department has improved significantly
- Continuous improvement in enforcement
- The enforcement program has worked down an enormous backlog of cases and works new cases efficiently.

**Stakeholder Relationships**

- Good relations with stakeholder groups
- Good working relations with stakeholders

**Legislation and Regulation**

- The legislative and regulatory section is superb.
- Well informed legislative process
- The board is able to systematically draft and implement regulations according to established priorities.

**Regulatory Process**

- Exceptional regulatory program
- Well organized regulatory program
- Efficient regulatory process
- The Dental Board of California, as a functional unit, is effective and usually focused on the important issues that need to be resolved. An environment of "safety" exists in that individuals are free to express their opinions and concerns without fear of ridicule or non-acceptance.

**Board Manager Feedback****Board Staff**

- Staff knowledge (Historical) ✓✓✓
- Sharing info between other Boards and Bureaus ✓✓✓
- Sworn staff / Non-Sworn investigators (CPEI) ✓✓
- New employees with fresh ideas ✓✓
- Investigation units fully staffed ✓✓
- Diverse staff experience ✓✓
- Employee morale (Orange office)

**Board Members**

- Affluent Board (pending fee increase)
- Active and cooperative Board members
- Strong rapport between EO and Board

**Other**

- Specially Funded ✓✓
- Portfolio ✓



## ORGANIZATIONAL STRENGTHS

**Board Stakeholder Feedback****Board Staff**

- Committed and intelligent personnel
- A good resource for answering questions
- Professionalism
- Dedicated staff
- Knowledgeable, caring and concerned staff
- Good organization
- Knowledgeable in the RDA programs
- Professional persons who provide knowledge and insight to our field
- Availability
- Good staff structure
- Knowledgeable staff
- Excellent teamwork
- Knowledgeable in the dental industry needs

**Board Leadership**

- Long term employees at the top
- Good, strong leadership
- Dental board upper management appears to be transformational leaders (interested in positive change).
- Qualifications of the leadership.
- Leadership within the profession to guide workforce issues
- Executive Officer has a strong institutional knowledge of dental issues and board history, and interacts collaboratively with stakeholders
- Top-level board staff are pleasant to work with, knowledgeable and generally responsive when issues arise.

**Board Members**

- Dedication and diversity of the board members, including strong public members who ask good questions and participate actively in discussions
- Public members providing a broader input for consumer safety
- Meets regularly
- Diverse organization/ by having Dentist, R.D.A., and Teachers, on the board
- Quality of Board members
- committed members
- The number of members that represent dentistry and the various specialties
- Board members demonstrate a strong commitment to enforcement and protection of the public as the board's top priority
- Board members and staff have proactively developed relationships with key legislators and staff through meetings and appearances/testimony at significant committee hearings

**Relationship with Stakeholders**

- Allows input from stakeholders; congenial toward non board members
- Represents the concerns of its dentist stakeholders
- Professional interest from community
- Consumers are represented
- They allow for auxiliary representation

**Examinations and Licensure**

- Proper examinations
- Issue and monitor licenses
- Good control of licensure

**Communication**

- Good communication to ALL oral health care professionals
- Good communication within professional organizational leaders and deans of dental schools

**Enforcement**

- Inquire into and adjudicate consumer complaints

**Regulation of Profession**

- Regulating the dental profession
- Set standards of safety/competence for delivery of oral health to public oversight
- As a highly structured bureaucracy, the dental board performs as a legal and rational form of authority.
- Consumer protection especially in the areas of oral and maxillofacial surgery, conscious sedation
- Good control of CE requirements
- Uphold the standard of practice in California
- It serves to protect the public
- Public protection

**Legislation and Regulation**

- Politically connected leaders
- Up to date with the regulations regarding RDA licenses
- The dental practice act = the law is the final determinant in any given situation.

**Other**

- No competition
- The dental board functions to promote, protect and enhance the dental care of the citizens.
- History of stability through external pressures

# ORGANIZATIONAL STRENGTHS

- Good supporting committees and employees
- Organizational policies are strong
- Qualified and experienced volunteers
- Administrative positions follow relatively stable and exhaustive rules (all to protect the public - i.e. the people).
- The dental board appears to be an open system, subject to influences from the internal and external environments. From my perspective, the organization's leadership practices systematic thinking and planning for change. The programs and services delivered are particularly adaptive when partnered with other organizations (i.e. Maximus).

## ORGANIZATIONAL WEAKNESSES

### Board Member Feedback

#### Technology

- Limited scope of computer programs to support the duties and responsibilities assigned to staff.

#### Board Staff and Leadership

- Some employee work ethic is not desirable
- Limited staff to conduct the necessary functions required to accomplish the Board's legislative and regulatory mandates in a timely manner.
- Major staff changes/departures resulting from retirements
- Retirement of experienced staff from the state workforce
- Staff turnover
- Changes in leadership of the Board

#### Board Experts

- Difficulty recruiting board experts
- Inconsistent performance of board experts
- Although I don't have direct contact with board experts I get the impression that it is difficult to recruit high quality experts. The quality of our experts can be improved thorough calibration and training but there has been little time to do this."

#### Dental Assisting

- There was little planning for the transition of dental assisting to the board from COMDA. There was virtually no provision made for sufficient staff support for 35,000 licensees, their educational programs and examinations. There have been some recent improvements in the program with current staff assignments but much more needs to be done.
- Dental assisting program
- Dental assisting department does not have a full time manager position
- Up and down relationship with Dental Assisting community
- Dental assisting educational programs lack effective oversight

#### Communication and Customer Service

- Staff communication with board members could be improved customer service for licensees
- "Customer service" for licensees is, at times, virtually non-existent

## ORGANIZATIONAL WEAKNESSES

- Licensees frequently complain that they do not receive information they request from the board. Messages are infrequently returned, and at times the phones are not answered.
- Communication with the public i.e. the telephone system needs work.
- Communication to and with the Board's stakeholders is a very important component of the Boards success and I think the quality, quantity and style of communication needs improvement.

**Stakeholder Relationships**

- Weak relationship with DHCC
- Working relationship between the functions - professional, licensed dental assisting, hygienists.
- Limited communication with the Board's stakeholders (citizens, license holders, legislators).
- The majority of the Board's time and budget is spent on enforcement. However, how much time and budget do we spend on "education for prevention" of enforcement issues? While we have a required Law and Ethics examination for initial license and a requirement of a minimum two unit CDE course in the California Dental Practice Act for license renewal, I think the Board can, and should, do more at the local level to educate dentists and dental assistants regarding prevention of issues resulting in disciplinary actions. I would like the Board to be seen by its licensees primarily as a "facilitator for good" rather than a "punisher for bad". Unfortunately, my perception is that too many dentists in California see the Board as their enemy rather than their partner. I would like to see that changed.

**Board Members**

- Vacancies left unfilled by appointment to the Board. We often have concern regarding establishing a quorum.

**Enforcement Program**

- The Board currently does not have the resources or capabilities to accomplish its mandate and/or mission in as timely a manner as I would like. The length of time from complaint to resolution for matters of enforcement, while it has been reduced significantly, is still not acceptable to me.

**Other**

- Vision and mission need work
- Not enough study materials for ancillaries
- Tension and other issues need to be abated in order to have positive environment where all are working toward the same goal.

## Board Manager Feedback

### Communication

- Lack of Communication / Cooperation between units, between managers, overall ✓✓✓✓
- Lack of collaboration among units ✓✓✓✓
- Website and navigation information ✓✓✓✓

### Tools and Facilities

- Out growing existing space ✓
- Vehicle reductions ✓
- Lack of Enforcement tools

### Board Staff

- Low Morale ✓✓✓
- Retirements ✓✓✓
- Employee accountability ✓✓
- Staff burn-out ✓✓
- Attendance issues w/ staff ✓✓
- Lack of Cross training ✓✓
- Lack of team environment ✓✓
- New positions/ BCP's ✓✓
- Manager Burn-out ✓
- Understaffed (licensing, dental assistant, complaints) ✓
- Attrition, lack of succession plan
- New Leadership w/ Staff

### Board Members

- Micromanagement by Board

### Technology

- Telephone System ✓✓✓
- Need for new telephone system ✓✓
- Migration to BREEZE
- CAS – complexity

### Other

- Portfolio

## Board Stakeholder Feedback

### Resources

- Lack of resources
- Underfunded by the State for all operations of the Board
- Understaffed(?)
- Budget restraints create heavy burdens.

### Communication and Customer Service

- Deficiencies in phone, email systems lead to far too many full mailboxes, unanswered phones, and unreturned calls and messages.
- It takes too long to get through the phone
- Confusing messages
- Not being able to get in contact with them when needed
- Meeting agenda packet release timing forces members and stakeholders to digest a great deal of material in a very short period of time, which can limit effectiveness of meeting discussions.
- Slow response time to inquiries
- Hard to reach anyone at the board by phone

### Dental Assisting

- Need more RDA representation
- Importance of dental auxiliaries
- Lack of representation for dental hygienist
- Lack of resources and staff designated in the Dental Assisting Area
- Lack of leadership in the regulation of dental assistants by dental assistants
- Dental board caves into politics rather than what is to the best interest of the public.
- Lack of knowledge about the Dental Assisting scope of practice
- Lack of knowledge about Dental Assisting Education and courses
- The DA is allowed to do way too much. There is not enough/or none education to allow DA to work on patients. There are far too many violations that happen from being uneducated. This is a huge implication for patient safety which should be the Dental Boards primary concern. Hopefully with the new DA council it will shed some light on the Dental Board about violations occurring. However, the concerns would be that the members of the Dental Board have DA as staff and would not want to have negative implications on their own office. I believe in these cases the DA council should have a vote.
- Not knowing enough of what is happening on the RDA exams
- Needs major changes to the DA, RDA to make comply with DPA. Way to much open to interpretations and law breaking

**Board Members**

- Not enough "wet finger" dentist on the board, we need more insight into what it is like to actually practice.
- The politically connected board members are an asset AND a liability.
- The Dental Board is heavily influenced by politics (constant review of programs etc.).
- Keeping certain issues on the book for a long time
- Too difficult to engage board/DCA legal counsel participation in issue discussions outside of board meetings.
- Not being able to make a decision on certain issues
- There needs to be a "peer review" within the DBC consisting of 50 dentists who provide background and research for board members.
- The board sometimes has difficulty reaching decisions on major issues, forcing issues to be punted from meeting to meeting

**Enforcement**

- Lack of funding for investigation of complaints
- Economic conditions influence the effectiveness of the dental board. Limited funding necessitates that the wheels of justice move slowly. Due to various economic factors, there seems to be a limited number of enforcement officers and therefore, licensed professionals in need of "policing" often do not face the music (so to speak) in a timely manner.
- More of a presence in the dental community for enforcement.

**Stakeholder Relationships**

- Communication with community/applicants
- Need to improve communication with Dental Community
- Being more current with the needs of the dental industry
- Special interest groups (dental and political) attempt to push current boundaries or guidelines
- DBC has been manipulated by certain specialty groups to empower their "turf wars"
- Lack of consumer member input and consumer member leadership
- Maintaining objectivity with influences from Leadership at CDA pushing their agenda

**Regulation of Profession**

- Not knowing enough of what is happening in the dental community including DA, RDA
- The Dental Board is heavily regulated (lots of rules with minimal flexibility).
- Not complying with the mandate to work with DHCC on such issues as infection control



## ORGANIZATIONAL WEAKNESSES

- Over protective of the dentists stakeholders market on services-not always acting in the best interest of consumers
- Dental Practice Act language is too legalistic
- Going out side of appropriate duties by accrediting dental schools
- Should be viewed as more proactive instead of complaint-driven
- Lost authority to issue first-time licenses at graduation
- Tends to get bogged down in "over-regulation" such as very specific wording about infection control

**Metrics**

- No clear metrics to define safety guidelines for proposed pilot programs
- Long term outcomes of programs are not readily available. Due to anonymity concerns, it seems difficult to track the success of participants once they graduate from the Diversion Evaluation Program. It would be nice to see outcomes listed in hard numbers.

**Politics**

- Is too unwilling to go directly to the legislature to fix problems with current statutes
- Politics have too much pressure or presence

**Board Direction**

- Lack of strategic direction
- Does not think "outside of the box"
- Limited capacity for the board to focus on long-term issues and trends. Agendas tend to be driven by immediate, short-term issues.

**Other**

- Dept. of Consumer Affairs has too much control over
- Lack of expertise in the areas of education
- Should be viewed as more proactive instead of complaint-driven

## EXTERNAL OPPORTUNITIES

### Board Member Feedback

#### Technology

- New technologies are always a possibility
- Breeze project hold promise
- The Breeze project, if it works, will greatly improve the efficiency of the board by integrating all the different workaround systems."

#### Public Perception

- Dental health is perceived as an integral part of overall health
- Oral health is now perceived as part of overall health
- The perception that dental health is part of overall health has elevated the public's understanding of the importance of dental health, but government funding of dental healthcare has not necessarily followed. For example the ACA includes dental care for children but not adults.

#### Workforce Issues

- Demand for healthcare services
- Increasing demand for healthcare services, including dentistry
- More insured children means more dental treatment
- Demand for dental services exceeds the capacity of the workforce. This will undoubtedly result in more licensees entering the workforce which is an opportunity for the board.

#### Access to Care

- Work with legislators and organized dentistry to increase access to dental care in rural and under served areas and populations.
- Partner with the legislature and the dental education community in California to facilitate access to low-cost dental care for individuals lacking resources to obtain care.
- There is currently a heightened general awareness of the need for dental care and the limited access to dental care by specific segments of the population.
- Historically, we have looked at the mandate to the Board to protect the citizens of California as making sure that the licensed dental health care providers are competent to perform the tasks within their scope of practice. This is all well and good and necessary, I agree with this approach to "protect". However, a broader approach to this mandate could also be seen as to "protect" the citizens of California against poor oral health and its effects on systemic health. I would like to see the Board consider being more pro-active in supporting good oral health in California in some non-traditional ways. To partner with community and/or professional organizations to sponsor public service spots

(in multiple languages) promoting good oral health and providing information regarding neighborhood resources available to obtain low cost/no cost oral health care would facilitate its mission.

#### Legislature and Politics

- We always need to work on our political support
- Potential of a state Dental Director would be favorable.
- A State Senator that is a dentist and is willing to work with the Board to accomplish its mission.
- Relationships with legislators
- Some board members have excellent relations with key legislators and legislative staff. This has been extremely helpful during sunset review and with other legislation affecting the board and offers opportunity for the future.

#### Other

- Support from Department of Consumer Affairs
- The new Director of DCA has expressed strong support for the DBC as well as other boards.

#### Board Manager Feedback

##### Technology

- Breeze ✓✓✓

##### Outreach

- Media – Public Service Announcement ✓✓✓
- Outreach – CDA/CADAT ✓

##### Partnerships

- Collaboration w/ other Boards and Bureaus ✓✓✓
- Rally Stakeholders for Support of DBC Issues ✓✓
- New DCA Enforcement Deputy Director

##### Enforcement

- Ipad/Tablets for Field Staff
- Broaden Enforcement Activity

##### Other

- Portfolio

EXTERNAL OPPORTUNITIES

## Board Stakeholder Feedback

### Resources

- Revenue from future dentist and RDA licenses
- Funding for more meetings to discuss more topics
- Ask for the rationale that despite an independent source of income, the board has to curtail staff and spending as dictated by Consumer affairs.

### Workforce Issues

- Ongoing policymaker interest in access to care/workforce provides opportunities for the board to show a more proactive interest in using its licensure and consumer protection roles to enhance access.
- Manpower issues

### Regulation of Profession

- Increased need to provide oversight in the area of foreign dentistry training
- Dental Ethics
- Needs to take an interest in new (California) dental schools
- Needs to take a stand regarding mid-level providers while interest and legislation is active
- Safety Guidelines
- Dentists Peer Review (internal watchdogs)

### Stakeholder Relationships

- Increase collaboration with DHCC
- Greater openness to the participation and influence of the public, media and internet.
- Being open to forming coalitions with other organizations (public or private) in obtaining goals.
- Needs to take advantage of (strengthen) relationships with organized dentistry groups

### Technology

- Web conferencing to save resources
- Make the board meeting binder completely electronic for all attending.
- Communicate with licensed members via e-mail and/or electronically instead of paper
- Make use of the NEW technologies making it easy to get in contact with the Board ex. checking on license
- Using updated technologies to expand access to services and obtain goals.
- Use technologies to enhance the skills and efficiency of the dental Board's human capital (the staff).

EXTERNAL OPPORTUNITIES

**Dental Assistants**

- The new Dental Assisting Council provides an opportunity for the board to demonstrate its commitment to paying serious attention to dental assisting issues.

**Access to Care**

- Working with other dental professionals to determine how to best serve the underserved populations
- Access to Care in the State
- Need for dental insurance reform-making dental insurance companies pay for preventive services and for comprehensive care

**Enforcement**

- The board could look for more ways to proactively "market" its enforcement successes.

**Legislature and Politics**

- Work to build strong collaborative efforts with political power players in the state to achieve objectives.

**Portfolio**

- Portfolio credentialing
- Portfolio input for monitoring compliance

**Other**

- In-office audits of records and outcomes

## EXTERNAL THREATS

### Board Member Feedback

#### Economy/State Budget

- Local and national economy.
- Cuts in state funding that affect the board's ability to hire
- Travel restrictions limit board outreach activities
- Board outreach is limited by travel restrictions

#### Legislature

- Well-intentioned but misguided legislation
- State legislative goals.

#### Enforcement

- Unlicensed activity and the ability of staff to keep up with trends and having the investigatory staff to track.

#### Other

- Corporate investment in dental practices
- Pressure from special interest groups and organizations.
- Dental workforce and access to care issues
- Future appointments to the Board.

### Board Manager Feedback

#### Economy/State Budget

- CA Economy – decrease in dental customers✓✓
- Budget Cuts ✓✓✓
- State Elections/ Tax initiative✓✓✓
- Agency Cuts to our resources✓✓✓
- Travel Restrictions✓✓✓
- Vehicle reduction✓✓
- Difficult to get supplies/ technology✓

#### Technology

- BreZE – rough transition✓

#### Politics

- Election year threats✓✓

EXTERNAL THREATS

**Partnerships**

- AG's Office ✓✓✓
- Unions ✓✓✓
- Demands from Stakeholders ✓
- New DCA Enforcement (deputy director) ✓

**Media**

- Media Scrutiny ✓✓✓

**Board Stakeholder Feedback****Resources/Economy**

- Economy
- Funding
- Failure to show that customer service will improve, and to clearly demonstrate the fiscal impact of increased enforcement responsibilities, will continue to make it difficult for the board to justify significant licensure fee increases to ward off future budget deficits.
- Economy regarding decreasing new/renewal for RDA licenses
- Economic
- Possible reduction in funding
- Reduced funding can lead to less meetings, therefore not resolving current issues
- An uncertain economic market - (potential budget problems) creating organizational inefficiency
- The States Budget
- Current state of the economy in California-decrease in jobs leading to consumers not opting to pay for dental care
- Economic strength is relatively weak when compared to the past affects all Boards

**Dental Assistants**

- Having DA is no benefit to the Dental Board. They are a threat to the dental board. No licensing, no fees, no exams or ce, no accountability
- The increase amount of unlicensed dental assistants performing duties of other licensed professionals
- Failure to make the Dental Assisting Council an effective and respected voice will lead to increased political pressure to take dental assisting regulation away from the board.
- The DA is a threat because RDA's are seeing that they don't need to pay all the fee's and CE. The Dental Board should view this as a huge threat to the success of the RDA. Which ultimately is a threat to the success of the Dental Board.



## DENTAL BOARD SWOT ANALYSIS RESULTS

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Look at some examples in CA the DA is the only one who can practice without a license. Medical you have to have one, massage therapy, manicures, vet tech. DA could potentially infect and give a patient a life long disease. Dental needs to see all the negative implications the DA's bring and find a better solution. The 8 hour IC is not the answer. No one is following the guidelines and there is no benefit for the Dental Board. I would like to see all DA be licensed so they are required to take 2 hr. ic and 2 hr. DPA every two years like all the other licensed professionals.

- Individuals being allowed to work without a license ex. dental assisting

### Enforcement

- Increased unlicensed activity.
- Possible increase in enforcement needs

### Workforce Issues

- Insurance companies stronghold on fees for service, move towards increased pressure for dentists to go to HMO type plans
- Too many dentists working in the state of California
- Misdistribution of dentists

### Legislature & Politics

- Termination by the Legislature
- Political policies that work against organizational efficiency.
- SB 1441

### Special Interest Groups

- Pressure from attorney groups representing numerous consumer special interests
- Special Interest Groups

### Regulation of Profession

- California State Board being replaced by the Western Regional exam
- Growth and penetration by out-of-state licensing agencies (WREB, NERB)
- money
- The attempts by consumer advocacy groups to remove the dental Board's autonomy.
- Decrease in standards of accepting who should be licensed to practice.
- Issues involving the corporate practice of dentistry (such as recent discussions about mobile/portable dental companies) are becoming increasingly prevalent, and the board may need to take a more proactive role in identifying and addressing any regulatory gaps

### Public Relations



- Public dissatisfaction for the services provided by the dental board (public value failure).
- Changes in cultural and societal values that affect the public's perception of the dental board.
- Changes in the laws and rules that regulate the practices of the dental board.

**Access to Care**

- Failure to actively engage in dialogue with the DHCC as to how to best meet the dental hygiene needs of consumers that lack access to care
- External pressure from CDA to not respond to future health care delivery models that would benefit the public

**Other**

- Mid-level providers
- attempts to create mid level providers
- Changes in health care (increasing government control) may weaken quality and undermine dentists
- The slowness of ability to get changes made.

- HealthyCal - <http://www.healthycal.org> -

## Electronic health records improve care, but don't save money

Posted By [Heather](#) On January 16, 2013 @ 12:00 am In [California Health Report](#) | [No Comments](#)

**By Callie Shanafelt**  
**California Health Report**

Thirty billion dollars was set aside to help Medicare and Medicaid providers move their operations into the high tech world of electronic health records as part of the 2009 Health Information Technology for Economic and Clinical Health (HITECH) Act. Four years later, providers say electronic health records aren't the time and money saver they hoped for — but, they added, electronic records do improve the quality of care.

Under the legislation, providers can apply for six years of funding to offset the costs of switching to this new way of operating. The earliest qualifiers received their initial grant of up to \$63,750 for each provider to purchase certified software, a costly endeavor. The Department of Health and Human Services estimates that it will cost at least double that for a doctor to set up a new certified system, but often costs almost four times as much.

Among the first applicants was Alameda Health Consortium community health clinics, which coordinated their efforts to negotiate a better price with electronic health record vendors. LifeLong Medical Care CEO Marty Lynch, a member of the clinic consortium, said they decided to make the switch because data monitoring is essential to health care reform and improved quality of care.

"We need to use the best technology to assure the best quality, both for individuals and the whole patient population," Lynch said.

Converting all nine locations in the LifeLong network will cost about \$5 million. Lynch said they'll get about half of that from the stimulus funds.

"As a non-profit community health center, we're really stuck in terms of how we make up that difference," Lynch said.

The implementation will likely increase their operating costs in the initial years as providers and staff learn the new system. Despite initial hopes that electronic health records would save clinics money, Lynch thinks they won't make a difference. It is likely any staff positions he is able to eliminate because of increased administrative efficiencies will be replaced by IT costs.

Some providers have been able to make the switch with the grant covering a greater portion of the costs, said Raul Ramirez, Chief of the California Office of Health Information Technology overseeing the Medi-Cal incentive program.

After the initial infusion of funds to purchase software, clinics can qualify for further funding if they provide proof of 'meaningful use.' The 17 objectives of 'meaningful use' include using electronic health records for prescriptions, labwork, sharing with specialists and hospitals as well as communicating with patients.

St. Anthony's Clinic in San Francisco was one of the early adopters of electronic health records. Medical director Ana Valdes said they are trying to decide if it is worth applying for the funding.

Until 2007, Saint Anthony's handled scheduling and administrative aspects of the clinic electronically with all the information stored on one server at the clinic, until the server caught on fire. Seeing an opportunity to upgrade the system, they joined forces with their sister clinic Glide Health Services to apply for funding for software to manage the clinic and track medical records.

"At that time we were still under the myth of increased efficiency," Valdes said.

The hope was that electronic health records could save money, increase efficiency and improve quality of care. But the new electronic health records system hasn't increased their capacity to see more clients.

"It doesn't matter how efficient your record keeping is," Valdes said, "it's based on your patients and what their needs are."

But Valdes said the one promise electronic health records did deliver on was to improve the quality of care.

"We're more prepared during the visit. We can show things more easily," Valdes said. "It reminds you of a lot of things you might not have paid attention to."

Studies show that electronic health records have significantly improved screening for diabetes, breast cancer, chlamydia and colorectal cancer.

Marty Lynch also hopes the switch to electronic health records will help LifeLong better track their patient population as a whole. For example, hypertension is a big problem with LifeLong patients. In order to track blood pressure with paper charts the clinic had to do individual audits.

"Once the data is in electronic health records we expect to be able to pull records and trends by provider and by clinic and understand better what we're doing," Lynch said.

The next major change for the state will be to develop a health information exchange with a consistent form of records that can be shared between providers, specialists and hospitals. This task is proving challenging because of all the competing vendors involved.

Providers are also expected to create a patient portal and use it to communicate with clients in order to qualify for future funding. This presents unique challenges for community clinics.

LifeLong serves more seniors than other clinics many of whom are not as tech savvy as younger clients.

Valdes said at first she assumed her clients didn't have access to the Internet. She soon learned she was wrong.

"Surprisingly a lot of my patients have a Facebook page," Valdes said. "I don't even have a Facebook page."

Now, she is more concerned that many of her clients don't have higher than a third grade education. She wants to be careful about posting complex medical information that could cause confusion or worry.

"If it's something really bad I don't want my patient to see it on the portal," Valdes said. "I want to call them up or have a face to face talk about it."

Also 60 percent of their clients are monolingual Spanish speakers so the vendor would need to provide a multilingual site.

Valdes has yet to see anything to suit her clients.

"We don't want to make a portal available if only one percent use it," Valdes said.

Although the switch to electronic health records represents a big shift in the way providers operate, and didn't provide the savings they had hoped, most say they wouldn't go back because of improvements to patient care.

Lynch points out that the only way electronic health records may save money is by improving the quality of primary care and reducing emergency care. Cost savings won't end up in community clinic's coffers, even through they are paying for the technology that is improving care.



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# **CalSIM**

California  
Simulation of  
Insurance  
Markets

*The California Simulation of Insurance Markets (CalSIM) model is designed to estimate the impacts of various elements of the Affordable Care Act on employer decisions to offer insurance coverage and individual decisions to obtain coverage in California. It was developed by the UC Berkeley Center for Labor Research and Education and the UCLA Center for Health Policy Research, with generous funding provided by The California Endowment.*

## **Estimating the Change in Coverage in California with a Basic Health Program**

A memorandum prepared at the request of the  
California Health Benefit Exchange

by the UC Berkeley Center for Labor Research and Education  
and the UCLA Center for Health Policy Research

August 2012

## MEMORANDUM

### Estimating the Change in Coverage in California with a Basic Health Program

*August 10, 2012*

The UC Berkeley Labor Center and UCLA Center for Health Policy Research were asked to examine the impact of a Basic Health Program (BHP) on coverage in California. To answer the question we employed the California Simulation of Insurance Markets (CalSIM) Model, version 1.7. Results are provided for two scenarios. The “base” scenario assumes typical responses by individuals and employers to expanded coverage offerings. The “enhanced” scenario is based on a more robust enrollment and retention strategy by state coverage programs.

#### Executive Summary

- A Basic Health Plan increases overall coverage in California between 60,000 and 120,000 under the base scenario. Under the enhanced scenario, the change in coverage over the no-BHP model ranges from a 20,000 increase to a 70,000 decrease depending on response to the BHP.<sup>1</sup>
- We find no negative impact on the risk mix in the overall Exchange/Individual Market as a result of a Basic Health Program.
- A Basic Health Program would reduce the size of the Exchange between 720,000 and 950,000 individuals. This could limit the Exchange’s bargaining power in the individual market, and may affect its ability to generate reforms that would lower the rate of premium cost growth over time.
- These results assume a \$20 per person per month premium in the BHP. A higher premium would reduce the gains in coverage; a lower premium would potentially improve response.

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<sup>1</sup> The negative impact in the enhanced model is a result of specifications in CalSIM 1.7 which set Medicaid take-up by the uninsured at 75 percent and Exchange with subsidy take-up at 70% across the entire subsidized population, with 85% and higher take-up rates among individuals from low-income (200% of FPL and below) households. In Model B, which treats the BHP like a Medicaid plan in terms of consumer response, this results in fewer people enrolling under the BHP than would do so in the Exchange with subsidies.

Background

The BHP option would apply to individuals eligible for subsidized insurance coverage through the California Health Benefit Exchange with incomes up to 200 percent of the Federal Poverty Level (FPL). This includes legal permanent residents with less than five years residency with incomes under 138% FPL, but not individuals otherwise eligible for Medi-Cal. Individuals with incomes under 200% FPL account for 41 to 44 percent of those projected to enroll in subsidized coverage through the Exchange and more than 51% of the subsidy dollars.

**Exhibit 1: Exchange Subsidy Eligible Californians under Age 65 by Income Category, 2019**

Income (Federal Poverty Level)	Eligible	Enrolled Base Scenario	Share of Enrolled with Subsidies, by Income	Enrolled Enhanced Scenario	Share of Enrolled with Subsidies, by Income
138% FPL or less	150,000	90,000	5%	140,000	7%
139-200% FPL	930,000	630,000	36%	790,000	37%
201-250% FPL	660,000	340,000	19%	420,000	20%
251-400% FPL	1,370,000	700,000	40%	800,000	37%
<b>Total</b>	<b>3,100,000</b>	<b>1,750,000</b>	<b>100%</b>	<b>2,150,000</b>	<b>100%</b>

Source: UC Berkeley-UCLA CalSIM version 1.7, Base and Enhanced Scenarios

Assumptions

To model the Basic Health Program we tested two different assumptions by adapting our current CalSIM model. Using our original CalSIM model, people earning 200% of FPL or under who are not eligible for Medi-Cal have four options – remain uninsured, accept an employer offer of coverage (if available), purchase subsidized coverage in the Exchange, or purchase unsubsidized coverage in the Exchange or individual market. To understand the impact of the BHP option, we added a fifth option to our model: enroll in the subsidized BHP. In addition, the individuals eligible for the BHP are no longer eligible for the subsidized Exchange, although they still have an option to purchase coverage on their own in the individual market without subsidies. Under the first model (“Model A”), we treat the BHP like a health insurance plan sold through the Exchange, with similar network, scope and reputation. In the second model (“Model B”), we treat the Basic Health Program more like Medi-Cal, assuming that response will mirror public program take-up decisions rather than private insurance due to welfare stigma, reputation, and plan selection being constrained to Medi-Cal managed care networks. These two models provide upper and lower bounds to understand how coverage might shift if California adopts a Basic Health Program option. In both models, the member premium share was set to \$20 per person per month based on a recent Mercer report on the financial feasibility of the BHP. We used the upper estimate of premium share paid by members up to 200% FPL.<sup>1</sup> Mercer suggested that the average premium would be \$17 per month in 2014 on average if members between 100 to 150% FPL were charged \$10 per month. After projecting a 3% per year premium increase for the BHP program over time

(versus a 6.5% increase per year in the Exchange’s commercial plans), the final 2019 per person premium is \$20 per month. All results are presented for 2019.

In the absence of a Basic Health Plan, families with incomes under 200% FPL would receive subsidies in the Exchange limiting out of pocket premium costs to a share of family income. This would range from 2% of income for a family with an income of 100% FPL to 6.3 percent of income for a family with an income equal to 200% FPL.<sup>2</sup> A single individual earning \$17,902 a year (134% FPL) would pay \$45 a month in premium costs in 2019 while an individual earning \$26,920 (200% FPL) would pay up to \$141 a month, (exhibit 2).

**Exhibit 2. Federal Poverty Level Categories and Predicted Out-of-Pocket Premium Spending for Exchange and Basic Health Program Enrollees in California, 2019**

<b>Federal Poverty Level Category</b>	<b>Projected 2019 Federal Poverty Level-based Income Amount for a single individual</b>	<b>Out-of-Pocket Premium Subsidy Threshold as Percent of Income</b>	<b>Maximum Silver Plan Out-of-Pocket Premium (per month)</b>	<b>BHP Individual Premium (per month)</b>	<b>Difference</b>
<b>0 to 100% FPL</b>	\$13,460	2%	\$22	\$20	-\$2
<b>134% FPL</b>	\$17,902	3%	\$45	\$20	-\$25
<b>150% FPL</b>	\$20,190	4%	\$67	\$20	-\$47
<b>200% FPL</b>	\$26,920	6.3%	\$141	\$20	-\$121

A BHP would significantly reduce the size of the Exchange, which will raise the administrative cost per policy. To account for the increased costs, we assume that premiums in the Exchange/Individual market will increase by 0.5%.

This analysis does not speak to the difference in benefits for enrollees and access to care between the two coverage options except to the extent that they affect take-up of coverage.

Enrollment Findings

In Model A we see a significant increase in take-up due to the price reduction from the BHP coupled with the assumptions that the BHP will operate like a commercial plan in terms of reputation and provider networks. An estimated 860,000 people enroll in the BHP in 2019, 80 percent of those who are eligible (Exhibit 3). In comparison, approximately 66% of those eligible for the Exchange with subsidies

<sup>2</sup> Legal permanent residents with less than 5 years residency in the United States are not eligible for Medicaid under the ACA, but are eligible for subsidies in the Exchange. For those with incomes below 100% FPL, premium costs are limited to 2% of the Federal Poverty Level.



were likely to take-up in previously published work using CalSIM version 1.7.<sup>2</sup> Coverage in the Exchange with subsidies falls by 720,000, while a small number shift from job-based coverage and out of the individual market or Exchange without subsidies. As a result, 120,000 additional individuals would have coverage under this model when compared to the Exchange with subsidies without a BHP option.

In Model B we adjust the responses to calibrate take-up to the experience of public programs. This takes into account the more limited networks in the BHP and the preference for some individuals to maintain continuity of coverage even in the face of a less expensive insurance option. Under this model 710,000 people take up coverage in the BHP by 2019. Slightly fewer than 60,000 are covered through the Individual Market or Exchange without subsidies in Model B from the BHP eligible income group. This includes 50,000 people with private coverage without the ACA who choose to retain a private insurance plan rather than enroll in the BHP. Overall, the number of people with coverage increases by 60,000 over the base scenario without the BHP.

In the enhanced versions of Model A, we estimate 950,000 fewer individuals in the Exchange with subsidies. These changes are partially explained by 1.01 million enrolling in BHP. In this model, 20,000 more people have coverage than would have without the BHP. BHP enrollment increases by 850,000 in the enhanced version of Model B. Under model B, the number of remaining uninsured increases in the enhanced model over the no-BHP option by 70,000, due to the lower projected take-up rate.

**Exhibit 3: Estimated Change in Source of Coverage, 2019 (millions)**

Source of Coverage	Base			Enhanced		
	Without BHP	Change in Coverage MODEL A	Change in Coverage MODEL B	Without BHP	Change in Coverage MODEL A	Change in Coverage MODEL B
Employer Sponsored Insurance	19.07	(0.01)	0.01	19.08	(0.02)	0.01
Public	8.92	-	-	9.38	-	-
Subsidized Exchange Exchange without Subsidies / Individual Market	1.75	(0.72)	(0.72)	2.15	(0.95)	(0.95)
Basic Health Plan	2.11	(0.01)	0.06	2.16	(0.02)	0.02
Uninsured	-	0.86	0.71	-	1.01	0.85
	3.96	(0.12)	(0.06)	3.04	(0.02)	0.07

Note: Based on Assumption that BHP enrollees will pay \$20 per person per month  
Source: UC Berkeley-UCLA CalSIM Model version 1.7

## Risk Mix Findings

The Affordable Care Act includes measures to adjust risk across plans in the Exchange and outside individual market. The BHP would not be included in risk adjustment. If California adopts the BHP, it could potentially affect the risk mix in the Exchange, which could in turn have important impacts on premium costs and enrollment.

In order to understand the impact of a BHP on the risk mix in the remaining Exchange/Individual Market we looked at three factors:

- prevalence of one or more of four chronic conditions: asthma, diabetes, heart disease and high blood pressure;
- self-reported health status; and
- age category.

A BHP could be expected to affect the risk mix in conflicting ways. There is a high correlation between health status and income. The BHP population as a whole is less likely to report “Excellent” or “Very Good” health status than those in the Exchange/Individual Market with incomes over 200 percent FPL. Prevalence of one or more of the four chronic conditions is similar between the two groups. Given the difference in health status, removing the BHP population from the pool has the potential to improve the risk mix. At the same time, lower income individuals receive the largest subsidies and a greater share is predicted to enroll in coverage due to the ACA. As a result, we would expect a broader mix of individuals within that market segment to obtain coverage. These two dynamics appear to counter act each other, leaving a slight improvement in the risk mix.

We find little change in the share of individuals with chronic conditions or self-reported health status among those with coverage in the Exchange or Individual market with or without a Basic Health Plan (Exhibit 4). Without the BHP, 28 percent of the individuals predicted to enroll in the Exchange/Individual have one or more chronic illnesses; with the BHP it is 27 percent. Without a BHP, we predict that 56 percent of the individuals that enroll in the Exchange have self-reported health status of “Excellent or Very Good,” without a BHP, 58 percent. With more adults leaving the Subsidized Exchange for the BHP, children make up a slightly larger share of the combined Exchange/Individual Market with the BHP (16%) than without it (13%). The highest cost age group, those between 45 and 65, makes up a similar share of the pool (33%) across all three models.

**Exhibit 4. Risk Mix Exchange and Individual Market 2019 with and without BHP**

	Without BHP		Model A Base		Model B Base	
	N	%	N	%	N	%
<b>Chronic Conditions</b>						
None	2,789,000	72%	2,288,000	73%	2,325,000	73%
1 or More	1,071,000	28%	841,000	27%	867,000	27%
<b>Health Status</b>						
Excellent	914,000	24%	787,000	25%	812,000	25%
Very Good	1,230,000	32%	1,040,000	33%	1,060,000	33%
Good	1,102,000	29%	863,000	28%	876,000	27%
Fair	526,000	14%	377,000	12%	381,000	12%
Poor	88,000	2%	62,000	2%	63,000	2%
<b>Age</b>						
0-18	512,000	13%	506,000	16%	507,000	16%
19-29	1,200,000	31%	953,000	30%	996,000	31%
30-44	878,000	23%	630,000	20%	638,000	20%
45-64	1,270,000	33%	1,041,000	33%	1,050,000	33%
<b>Total</b>	<b>3,860,000</b>		<b>3,129,000</b>		<b>3,191,000</b>	

Source: UC Berkeley-UCLA CalSIM version 1.7

Note: Based on assumption that BHP enrollees will pay \$20 per person per month;

Model A = "Exchange"-like take-up decisions, Model B = "Medicaid"-like take-up decisions

**Discussion**

The BHP has the potential to increase coverage in California by 60,000 to 120,000 people by 2019 compared to the Exchange with subsidies on its own. This is consistent with findings in an analysis of a BHP in California by the Urban Institute.<sup>3</sup> Under the enhanced CalSIM scenario, which assumes stronger outreach and enrollment strategies by the Exchange, the benefits to coverage from a BHP decrease significantly.

As noted above, this analysis assumes a \$20 per person per month premium cost, which may be lower than the real premium in 2019. To the degree the premium cost is higher, the increase in coverage would be smaller; if a BHP is able to offer a lower premium, the impact on coverage would be greater. Federal law allows the BHP premium to be as high as the second lowest silver plan offered in the Exchange, which provides a wide range of values that would potentially affect take-up as the price increased. While subsidies available to lower-income people would not change in that pricing scenario, the differences in cost of the BHP versus an Exchange plan would be reduced substantially. To ensure

the high levels of take-up in the BHP estimated here, the actual out-of-pocket premium would need to remain low relative to the silver plan premium options available in the Exchange.

Another important factor that could impact coverage under the BHP is increased churn between the programs. An analysis by John Graves for the Institute for Health Policy Solutions suggests that this would be significant.<sup>4</sup> Using the Survey of Income and Program Participation, he estimates that only 30 percent of those who qualify for the Basic Health Plan at the beginning of the year will still qualify at the end of the year. If individuals are required to re-enroll as their income changes between BHP coverage and Medi-Cal on the one side and BHP coverage and the Exchange on the other, it could create an additional administrative barrier to continuous coverage. This can be minimized if churn between Medicaid and the BHP is made seamless for enrolled individuals; how seamless this process can be is dependent on the federal rules on Basic Health Plans, which have not been issued.

Finally, a smaller Exchange (720,000 to 950,000 fewer enrollees by 2019) would have reduced market power. This could affect the bargaining power of the Exchange in the insurance market and reduce its ability to drive reforms in the delivery system that can serve to reduce costs over time. To the degree that premium in the BHP and administrative costs in the Exchange are higher than projected, increases in coverage would be correspondingly reduced.

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<sup>1</sup> Mercer, *State of California Financial Feasibility of a Basic Health Program*, June 28, 2011 (accessed on July 22, 2012 from <http://www.mercer-government.mercer.com/basic-health-program/feasibility>). Funded by The California HealthCare Foundation.

<sup>2</sup> Jacobs K, Watson G, Kominski GF, Roby DH, Graham-Squire D, Kinane CM, Gans D, and Needleman J. *Nine out of Ten Non-Elderly Californians Will Be Insured When the Affordable Care Act is Fully Implemented*. UC Berkeley Center for Labor Research and Education, Research Brief, June 2012. Accessed on July 22, 2012 from [http://www.healthpolicy.ucla.edu/pubs/files/calsim\\_Exchange1.pdf](http://www.healthpolicy.ucla.edu/pubs/files/calsim_Exchange1.pdf).

<sup>3</sup> Dorn, Stan, "Basic Health Program: Issues for California," webinar, August, 2011. <http://www.urban.org/uploadedpdf/412370-basic-health-program-california.pdf>

<sup>4</sup> Curtis, Rick and Ed Neuschler, "Income Volatility Creates Uncertainty about the State Fiscal Impact of a Basic Health Program (BHP) in California, September, 2011.

[http://www.ihrs.org/pubs/Income\\_Volatility\\_Creates\\_BHP\\_Uncertainty\\_2Sep2011.pdf](http://www.ihrs.org/pubs/Income_Volatility_Creates_BHP_Uncertainty_2Sep2011.pdf)