

STATE OF CALIFORNIA



MEMO

**To : BOARD DEVELOPMENT COMMITTEE
RYAN BROOKS, CHAIR
BISMARCK OBANDO, MEMBER**

Date: May 1, 2012

**From : WILLIAM G. BRENNAN
ROBIN PARKER
DANA WINTERROWD**

**Subject: BOARD MEMBER EDUCATION CONCERNING CHANGES TO THE
ADMINISTRATIVE PROCEDURE ACT, BAGLEY-KEENE OPEN MEETING
ACT, POLITICAL REFORM ACT, AND PUBLIC RECORDS ACT**

Attached are detailed summaries of the Administrative Procedure Act and Bagley-Keene Open Meeting Act prepared by Robin, and of the Political Reform Act and Public Records Act prepared by Dana. A brief summary of the Acts are as follows:

ADMINISTRATIVE PROCEDURE ACT¹

The Administrative Procedure Act, Government Code section 11340 et seq., is the basic law controlling administrative agencies in California. The APA consists of three chapters of the Government Code. Chapter 3.5 (Gov. Code §§ 11340-11361), establishes the Office of Administrative Law and sets forth the law covering the quasi-legislative function of administrative agencies, i.e., the promulgation of regulations.² When the Board elects to amend, adopt, or repeal regulations, it does so in compliance with Chapter 3.5. Chapter 4.5 (Gov. Code §§ 11400-11475.70), applies to any adjudicative proceeding required to be conducted under Chapter 5. (Gov. Code §§ 11500-11529) These statutes are the basic authority or “rules of procedure” governing administrative quasi-judicial proceedings. They govern administrative hearing procedures unless the statutes relating to a specific agency’s proceedings provide otherwise. (Gov. Code §§ 11410.50, 11415.10, and 11415.20)

The Board’s specific authority to conduct administrative hearings is found in statute, Vehicle Code section 3000 et seq., and in regulation, Title 13, California Code of Regulations (“Title 13” or “13 CCR”), section 550 et seq. Specific Board procedures set forth with particularity

¹ The changes to the APA summary are limited to grammatical changes throughout, footnote 1 and 3 were added, and the discussion on the *Morongo Band of Mission Indians* decision was updated to reflect the decision by the California Supreme Court, which reversed the appellate court. (See Section I.G.7. Ex Parte Communications, p. 9) There were no statutory changes or significant decisions impacting the Board’s quasi-judicial functions.

² There were a number of amendments to Chapter 3.5 that do not pertain to the Board’s quasi-judicial functions and are therefore not reported. The staff will comply with these new changes when it promulgates rulemaking in the future.

in the Vehicle Code and Title 13 are controlling over the APA. Also, Vehicle Code section 3066 (a), expressly incorporates Government Code sections 11507.3, 11507.6, 11507.7, 11511, 11511.5, 11513, 11514, 11515, and 11517 into Board procedures for hearings on protests only. No provisions in the Vehicle Code or Title 13 exempt the Board from the APA. Any provisions of the APA not in conflict or inconsistent would supplement the Vehicle Code and Title 13 sections. To the extent it is subject to the APA, the Board is in compliance with all applicable provisions.

THE BAGLEY-KEENE OPEN MEETING ACT³

The Bagley-Keene Open Meeting Act (“Act”), at Government Code section 11120 -11132, is one of the “sunshine laws” that ensures citizens have knowledge of the activities and workings of government. A democratic government assumes that those who elect public officials will have free access to what those public officials are doing. Access to government meetings and records provides citizens with the information they need to participate in the democratic process and to insist that government officials are held accountable for their actions. The best way to emphasize the intent of open meeting laws is to set forth the first section of the Act as follows:

- ❖ 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. (Gov. Code § 11120)

THE POLITICAL REFORM ACT⁴

The Political Reform Act (“PRA”), Government Code section 81000 et seq., is the basic ethics law in California. Although a significant focus of the PRA is on campaign financing and election committees, the main purpose of the PRA, in relation to the Board’s operations, is to ensure that Board decisions are made fairly without regard to who is affected by those decisions. The PRA provides that Board members and staff are required to publicly disclose their financial interests in entities specified in the Board’s conflict of interest regulation (Form 700 or Statement of Economic Interests) and to refrain from

³The changes to the Bagley-Keene Open Meeting Act summary from the one provided in 2011 are limited to grammatical changes throughout and footnote 1 was added. Subdivision (c)(19) in Government Code section 11126, which pertains to the California Sex Offender Management Board, was added. There were no statutory changes or significant decisions impacting the meetings the Board holds.

⁴ There were no substantive changes to this summary from the one provided in 2011; nor were there any substantive changes that impacted the Board or significant decisions, except as noted.

participating in decisions in which there is such an interest.

New Statute Relevant to the Board

Under Senate Bill 801⁵, State boards (including NMVB) must forward copies of Statements of Economic Interests, filed by appointees, to the Fair Political Practices Commission (FPPC), unless the Board's conflict-of-interest code designates the FPPC as the filing officer, in which case the FPPC will continue to receive the originals.

New Regulations Relevant to the Board

In 2011, the FPPC approved numerous revised gift regulations (rules) that contain more stringent provisions than those contained in previous rules. Included with the materials that accompany this memorandum are the FPPC's summary of the changes to the gift rules, entitled *2012's New Changes To The Gift Rules*, and the FPPC's 2012 fact sheet entitled, *Limitations and Restrictions on Gifts, Honoraria, Travel and Loans* [for State officials].

PUBLIC RECORDS ACT⁶

The California Public Records Act ("CPRA"), Government Code section 6250 et seq., provides public access to state and local government information. It is the other major "sunshine law" that ensures citizens have knowledge of the activities and workings of government. The policy supporting the CPRA is expressed by the legislative intent of the law as follows: "the Legislature...finds and declares that access to information concerning the conduct of the people's business is a fundamental and necessary right of every person in this state." (Gov. Code § 6250)

The CPRA favors disclosure unless there is a specific reason not to, which is usually based on confidentiality and privacy considerations. These reasons, set forth as specific statutory exemptions, have been interpreted and evaluated by the courts over the years. Nondisclosure can also be justified if it can be established that the public interest in nondisclosure outweighs the public interest in disclosure. The state policy favoring disclosure was emphasized with the passage of Proposition 59, which states in part as follows: "A statute, court rule, or other authority, including those in effect on the effective date of this subdivision, shall be broadly construed if it furthers the people's right of access, and narrowly construed if it limits the right of access." (Emphasis added.)

If you have any questions or comments, please contact me at (916) 324-6197, Robin at (916) 323-1536, or Dana at (916) 327-3129. This matter is being agendized for information only at the May 22, 2012, General Meeting.

cc: Ramon Alvarez C.

Attachments

⁵ Authored by Christine Kehoe and enacted as Chapter 252 of the Statutes of 2011.

⁶ There were no substantive changes to this summary from the one provided in 2011; nor were there any substantive changes that impacted the Board or significant decisions.