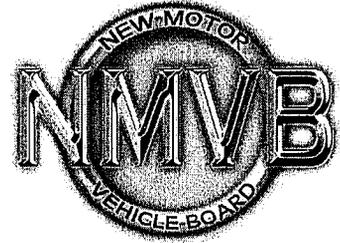


STATE OF CALIFORNIA



MEMO

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

Date: February 15, 2013

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 Code² 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. 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

¹ There were no substantive changes to the APA summary nor were there any statutory changes or significant decisions impacting the Board's quasi-judicial functions. There were statutory changes that authorize the Administrative Director of Workers' Compensation to establish, maintain, administer, and publish annually an updated list of certified administrative hearing interpreters and certified medical examination interpreters. (Gov. Code §§ 11435.30 and 11435.35) Additionally references to the Department of Personnel were changed to the Department of Human Resources in several sections pertaining to certified interpreters. None of these changes impact the Board. (Gov. Code §§ 11435.40, 11435.45, and 11435.50)

² All statutory references are to the Government Code unless otherwise indicated.

forth with particularity 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

³ The changes to the Bagley-Keene Open Meeting Act summary from the one provided in 2012 are limited to Section E on pages 8-9 entitled "Opportunity For Public To Address State Body". Subdivisions (c)(1) and (c)(2) of Government Code section 11125.7 were added, and the other subdivisions were renumbered. The revisions provide that when a state body limits public comment at least twice the allotted time should be provided to a member of the public that utilizes a translator. This ensures that non-English speakers receive the same opportunity to directly address the state body. If the state body uses simultaneous translation equipment in a manner that allows the state body to hear the translated public testimony simultaneously then no additional time is necessary. 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 2012; nor were there any statutory changes or significant decisions impacting the Board.

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 participating in decisions in which there is such an interest.

New Statute Relevant to the Board

None.

New Regulations Relevant to the Board

The FPPC gift regulations (rules) contain more stringent provisions than those contained in previous rules. These changes became effective on January 12, 2012, and the FPPC has recently revised its fact sheet on the subject. The fact sheet, entitled, *Limitations and Restrictions on Gifts, Honoraria, Travel and Loans* [for State officials], is included with the materials that accompany this memorandum, together with FPPC's recently revised summary of those changes, entitled *2012's New Changes To The Gift Rules*. Additional, detailed material, such as the FPPC's section-by-section summary of the regulation amendments, is available at www.FPPC.ca.gov.

Public Records Act⁵

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."

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 March 13, 2013, General Meeting.

Attachments

⁵ There were no substantive changes to this summary from the one provided in 2012; nor were there any statutory changes or significant decisions impacting the Board.