

STATE OF CALIFORNIA



## MEMO

**To : BOARD DEVELOPMENT COMMITTEE  
DAVID C. LIZÁRRAGA, CHAIR  
RAMON ALVAREZ C., MEMBER**

**Date:** February 12, 2015

**From : WILLIAM G. BRENNAN  
ROBIN PARKER  
DANIELLE R. VARE**

**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 Danielle. A brief summary of the Acts are as follows:

### **Administrative Procedure Act**<sup>1</sup>

The Administrative Procedure Act (“APA”), 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. 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”), section 550, et seq. Specific Board procedures set 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

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<sup>1</sup> 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.

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 Act<sup>2</sup>**

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 Act**

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 participating in decisions in which there is such an interest.

### **New Regulations Relevant to the Board**

Effective January 1, 2015, the FPPC increased the limit on gifts that may be received by a Board member or staff designated in the Board’s Conflict of Interest Code to \$460. The

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<sup>2</sup> There were no statutory changes or significant decisions impacting the meetings the Board holds. Subdivision (c) of Section 11123 was added. This section pertains to meetings by teleconference and requires the state body “...publicly report any action taken and the vote or abstention on that action of each member present for the action.”

receipt of \$460 or more from an entity specified in the Board's conflict of interest regulation creates a financial interest and will disqualify members or staff from participating in any decisions in which they have such a financial interest.

The FPPC also made changes to the definition of a "financial interest" and specifically when those financial interests actually disqualify a public official's participation in a government decision. In addition to specific financial interests being defined as material as listed in 2 CCR § 18705.1(a)(1)-(7), there is a catch-all definition which defines a financial effect as material "if a prudent person with sufficient information would find it is reasonably foreseeable that the decision's financial effect would contribute to a change in the price of the business entity's publicly traded stock, or the value of the privately-held business entity." 2 CCR § 18705.1(b) In addition, the FPPC set forth a different, four-step analysis for determining whether a public official's conflict of interest is prohibited under the PRA. There is also an ability to segment a decision to allow a public official to participate in a governmental decision, as well as exception to disqualification if the public official's vote is legally required for the action and the decision will have no effect on the person or business entity before the official of the personal finances of the official and/or his or her immediate family.

### **Public Records Act**<sup>3</sup>

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."

### **Decisions that may impact the Board**

One important case interpreting the CPRA regarding exemptions from disclosure is that of *Ardon v. City of Los Angeles* (2014) 232 Cal. App. 4th 175, in which the California Appellate Court for the Second District held that a city's inadvertent disclosure of privileged documents pursuant to a CPRA request constitutes a waiver of privilege, promoting public

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<sup>3</sup> There were no substantive changes to the California Public Records Act summary from the one provided in 2014; nor were there any statutory changes. However, there was one clarifying decision that may impact the Board and is discussed further.

disclosure. More clearly, the court stated, “We conclude that [Government Code] section 6254.5 unambiguously expresses the Legislature’s intention that everything produced in a response to a [C]PRA request must be accessible to everyone except in the limited circumstances stated in the statute itself. We hold that disclosures pursuant to the [C]PRA that are made inadvertently, by mistake or through excusable neglect are not exempted from the provisions of section 6254.5 that waive any privilege that would otherwise attach to the production.” Therefore, any disclosure of otherwise privileged documents by the Board will result in the loss of the privilege, as well as the requirement that the previously privileged document now be made available to any future requesting party.

If you have any questions or comments, please contact me at (916) 324-6197, Robin at (916) 323-1536, or Danielle at (916) 327-3129. This matter is being agendaized for information only at the March 25, 2015, General Meeting.

Attachments