

ANALYSIS OF AMENDED BILL

Franchise Tax Board

Author: Nakano Analyst: Gloria McConnell Bill Number: AB 1209

Related Bills: See Legislative History Telephone: 845-4336 Amended Date: 03/27/03

Attorney: Patrick Kusiak Sponsor: _____

SUBJECT: Public Records/Open Meetings/Authorizes State Bodies to Hold Closed Sessions Regarding Security/Delete Repeal Date to Make Permanent

SUMMARY

This bill would:

- make permanent the law that allows state bodies to hold closed session meetings to discuss matters posing threats or potential threats of criminal or terrorist activity; and
- preclude public disclosure of public agency security information relating to terrorist acts.

SUMMARY OF AMENDMENTS

The March 27, 2003, amendment adds the provision that would preclude public agency security information from public disclosure requirements.

PURPOSE OF THE BILL

It appears that the purpose of this bill is to protect public agency security information relating to terrorist acts from public disclosure.

EFFECTIVE/OPERATIVE DATE

This bill would become effective January 1, 2004.

POSITION

Pending.

ANALYSIS

FEDERAL/STATE LAW

Current state law requires that all meetings of a multi-member state body be open to the public.

Board Position:

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Department Director
Gerald H. Goldberg

Date
4/17/03

Current state law allows a state body to meet in closed session with regard to specific matters, as follows:

- to consider the appointment, employment, performance evaluation, or dismissal of a public employee, unless the employee requests a public hearing.
- to confer with or receive advice from legal counsel regarding pending litigation.
- to allow the Franchise Tax Board to discuss confidential tax returns or related information that is prohibited from disclosure by law.

Additionally, under current law, on a temporary basis (until January 1, 2006), state bodies are:

- Allowed to hold closed sessions where disclosing matters regarding threats or potential threats of criminal or terrorist activity against the following identified assets could compromise or impede safety or security of these assets: personnel, property, buildings, facilities, or equipment. These assets include electronic data, owned, leased or controlled by the state body.
- Allowed to meet in a closed session to discuss threats or potential threats upon a two-thirds vote of the members present at any regular or special meeting.
- Required to reconvene in open session prior to adjournment to report that a closed session was held to discuss threats or potential threats, the general nature of the matters considered, and whether action was taken in closed session.
- Required after the closed session to submit to the Legislative Analyst a written report containing information relative to the closed session. The Legislative Analyst must retain such reports for four years.

Under current state law, unless otherwise exempt or prohibited by law, records of state and local agencies must be disclosed to the public upon request, including records concerning administration of the agency. Tax return information is confidential and may not be disclosed to the public.

THIS BILL

This bill would make permanent the above described temporary law that allows state bodies to hold closed sessions if disclosing matters regarding threats or potential threats of criminal or terrorist activity could compromise or impede safety or security. In addition, this bill would make the following changes to the permanent provisions. This bill would:

- Clarify that the threats and impact on safety or security would be with respect to the public, rather than to the identified assets.
- Provide that the identified assets would be an inclusive list, and expressly not a limitation.
- Include in the identified assets electronic data that is under the jurisdiction of the state body.

In addition, this bill would preclude public disclosure of any of the following:

- Vulnerability assessments developed by or for a public agency that identify potential targets of terrorist acts.
- Records that depict how public agencies will mitigate the potential of terrorist acts on public facilities or critical infrastructure.
- Records that disclose information about facility security that could be used to aid a potential terrorist act.

IMPLEMENTATION CONSIDERATIONS

Implementing this bill would not significantly impact the department's programs and operations.

LEGISLATIVE HISTORY

AB 2072 (Stats. 2002, Ch. 1113) enacted the temporary law that would be made permanent and amended by this bill.

OTHER STATES' INFORMATION

A review of the laws of *Illinois, Massachusetts, Minnesota, Michigan, and New York* found generally that while these states allow closed session meetings, they do not specifically address closed sessions to discuss criminal or terrorist threats. These states were selected due to their similarities to California's economy and public meeting laws.

FISCAL IMPACT

Departmental Costs

This bill would not significantly impact the department's costs.

ECONOMIC IMPACT

Revenue Estimate

This bill would not impact the state's income tax revenue.

LEGISLATIVE STAFF CONTACT

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