

ANALYSIS OF ORIGINAL BILL

Franchise Tax Board

Author: Cohn Analyst: Marion Mann DeJong Bill Number: AB 1827

Related Bills: See Legislative History Telephone: 845-6979 Introduced Date: 01/20/2004

Attorney: Patrick Kusiak Sponsor: _____

SUBJECT: State Bodies May Hold Closed Sessions to Discuss Audit Work Conducted by Bureau of State Audits

SUMMARY

This bill would allow a state body or local legislative body to meet in closed sessions to discuss issues relating to audit work conducted by the Bureau of State Audits.

PURPOSE OF THE BILL

According to the author's staff, the purpose of the bill is to resolve conflicting laws that prevent state bodies from meeting in closed session to discuss confidential audit reports, which hampers the ability of the Legislature to fulfill its oversight role since it often receives audit reports without complete responses and action plans from the body being audited.

EFFECTIVE/OPERATIVE DATE

This bill would become effective January 1, 2005, and would apply to Franchise Tax Board meetings conducted after that date.

POSITION

Pending.

ANALYSIS

STATE LAW

Current state law prohibits the State Auditor and any employee or former employee of the Bureau of State Audits from disclosing audit information not expressly permitted by law to be disclosed. Current state law also prohibits the State Auditor from releasing any papers, correspondence, memoranda, or substantive information pertaining to any audit that is pending.

The Bagley-Keene Open Meeting Act requires all meetings of a state body to be open and public and grants the right to attend such meetings to all persons, with certain exceptions. A state body conducting a meeting is required to:

Board Position:

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Department Director

Date

Gerald H. Goldberg

2/25/04

- provide an agenda and specified notice of its public meetings at least 10 days in advance of the meeting,
- declare the reason for a closed session prior to the closed session and cite the specific statutory authority for the closed session, and
- report, at a subsequent public meeting, any action or roll call vote to appoint, employ, or dismiss a public employee made during a closed session.

The Act defines a state body to mean every state board, 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. In addition, the Act excludes from that definition certain bodies of the Judiciary and Legislature, among other things.

The Act provides specific exceptions to the open meeting requirements. Closed sessions are allowed for items such as 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. The Act allows the Franchise Tax Board to hold closed sessions for the purpose of discussing 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.

The Ralph M. Brown Act governs meetings of legislative bodies of local agencies (e.g., boards of supervisors, city councils, school boards).

THIS BILL

This bill would add an exception to the Bagley-Keene Open Meeting Act allowing state bodies to discuss issues relating to the confidential audit work conducted by the Bureau of State Audits in closed session meetings. After the public release of an audit report by the Bureau of State Audits, any meeting of a state body regarding the audit report would be conducted in open session, unless exempted by some other provision of the law. A corresponding change would be made to the Ralph M. Brown Act for a local legislative body.

IMPLEMENTATION CONSIDERATIONS

Implementing this bill would not significantly impact the department's procedures. Under this bill, the Franchise Tax Board would be allowed to meet in closed session to discuss an audit conducted by the State Auditor. It would give the Board the opportunity to discuss any issues presented in an audit report fully and take appropriate action before the audit report is finalized.

LEGISLATIVE HISTORY

SCA 1 (Burton, Resolution Stats. 2001, Ch. 1) will allow the electorate to consider a constitutional amendment on the November 2, 2004, general election ballot concerning the people's rights to access certain public information.

OTHER STATES' INFORMATION

The laws of *Florida, Illinois, Massachusetts, Michigan, Minnesota, and New York* were reviewed. Based on a limited review, it appears that all of these states have open meeting laws. However, it could not be determined if closed sessions are allowed to review audit findings or if there is a problem in their law similar to the problem this bill would address.

FISCAL IMPACT

This bill would not impact the department's costs.

ECONOMIC IMPACT

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

LEGISLATIVE STAFF CONTACT

Marion Mann DeJong
Franchise Tax Board
845-6979
marion.dejong@ftb.ca.gov

Brian Putler
Franchise Tax Board
845-6333
brian.putler@ftb.ca.gov