Franchise Tax Board

ANALYSIS OF ORIGINAL BILL

Author:	Eng	Analyst:	Deborah Barrett	Bill Number:	AB 1494
Related Bills:	See Legislative History	Telephone:	845-4301	Introduced Date:	February 27, 2009
		Attorney:	Patrick Kusiak	Sponsor:	

SUBJECT: Public Meetings/Majority Of State Body Members Shall Not Outside Of Meeting Use Series Of Communications To Discuss, Deliberate, Or Take Action On Any Item Within Subject Matter Of State Body

SUMMARY

This bill would prohibit a majority of members of a state body from using a series of communications to discuss, deliberate, or take action on any item of business that is within the subject matter of that state body.

PURPOSE OF THE BILL

It appears that the purpose of this bill is to protect the interests of the general public by limiting the discussions between members of a state body to that discussion conducted in an open meeting.

EFFECTIVE/OPERATIVE DATE

This bill would be effective January 1, 2010, and operative as of that date.

POSITION

Pending.

ANALYSIS

FEDERAL/STATE LAW

Under federal law, the "Sunshine Act" requires that, except for specific exemptions, "every portion of every meeting of an agency shall be open to public observation." Agencies are required to follow a specific procedural process to close or properly open a meeting. An agency must publicly announce the time, place, and subject matter of the open meeting at least one week prior to the meeting date. The agency must submit that information to the *Federal Register* for publication immediately following public announcement.

The Sunshine Act defines "agency" to mean each authority of the United States that is headed by a collegial body composed of two or more individual members, a majority of whom are appointed to such position by the president with the advice and consent of the Senate, and any subdivision thereof authorized to act on behalf of that agency. The act defines "meeting" to mean the deliberations of at least the number of individual agency members required to take action on behalf of the agency where such deliberations determine or result in the joint conduct or disposition of official agency business.

Board Position:			Department Director	Date
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Under state law, 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 do the following:

- Provide to the public an agenda and specified notice of its public meetings at least ten days in advance of the meeting, and
- Make available to the public, either at the meeting or after the meeting, any public records relating to any agenda item that will be considered at the meeting.

Public records distributed to members of a state body prior to or during a public meeting must be made available for public inspection *at* the meeting. If the writing is prepared by other than the governmental body or a member of the governmental body, it must be made available for public inspection upon request without delay *after* the meeting.

Specific to the Franchise Tax Board (FTB), current state law requires that before the three–member Franchise Tax Board (Board) can take a final action on any business item, writings that are prepared and distributed by FTB staff or

1) Made available for public inspection at that meeting.
2) Distributed to all persons who request notice in writing pursuant to subdivision (a) of Government Code section 11125.
3) Made available on the Internet.

<u>THIS BILL</u>

This bill would repeal existing provisions that prohibit direct communication, personal intermediaries, or technological devices that are employed by a majority of the members of a state body to develop a collective concurrence as to action to be taken on a business item by the members of the state body.

The bill would prohibit a majority of the members of a state body, outside of an authorized meeting, from using a series of communications of any kind, directly or through intermediaries, to discuss, deliberate, or take action on any item of business that is within the subject matter of the state body.

The bill would not apply to an employee or an official of a local agency as defined, engaging in a separate conversation or communication with members of a state body if the conversation or communication meets the following criteria:

- The conversation or communication is outside of an authorized meeting.
- The conversation or communication is for the purpose of answering questions or providing information regarding a matter that is within the subject matter jurisdiction of the state body.
- The employee or official does not communicate to a member of the state body regarding the comments or position of any other member of the state body.

The bill would make other nonsubstantive technical changes to the Government Code section.

IMPLEMENTATION CONSIDERATIONS

Implementing this bill would not impact department programs or operations.

TECHNICAL CONSIDERATIONS

On page 2, line 26, after “the”, “propose” should be changed to “purpose”

On page 2, line 30, after “position”, “or” should be changed to “of”

LEGISLATIVE HISTORY

AB 780 (Chu, Stats. 2005, Ch. 188) aligned the FTB open meeting procedural requirements with those applicable to the Board of Equalization open meetings.

SB 445 (Burton, Stats. 2001, Ch. 670) requires FTB to distribute certain documents in a specified manner before a final action can be taken at a meeting of the three-member Board.

OTHER STATES’ INFORMATION

A search for similar laws in *Florida*, *Illinois, Massachusetts, Michigan, Minnesota*, and *New York* was made. These states were selected due to their similarities to California's economy, business entity types, and tax laws. While these states have similar Open Meeting requirements, the taxing authorities are not governmental boards to which an open meeting act applies; therefore, a meaningful comparison cannot be made.

FISCAL IMPACT

This bill would not impact department costs.

ECONOMIC IMPACT

The provisions of this bill would not impact state income tax revenues.

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