

Written Materials Pertaining to Action Items At Meetings of the Franchise Tax Board

As a multi-member state body, the 3-member Franchise Tax Board (Board) is subject to the Bagley-Keene Open Meeting Act, which is contained in Government Code sections 11120-11132. This law generally requires a multi-member state body to conduct its business in meetings open to the public, and also requires advance notice to the public of the time and location of meetings, along with a specific agenda of the matters to be considered at the meeting.

Pursuant to a recent amendment with respect to the Board only (Gov. Code, § 11125.1, subd. (c)), this law also requires that, prior to the Board taking final action on an item, all writings pertaining to that item that are public records and that are distributed to the Board members by FTB staff or individual members prior to or during a Board meeting must be:

- Made available for public inspection at the meeting,
- Distributed to all persons that requested notice of meetings, and
- Posted on the Internet.

Although Board action can, and often does, consist of approval of a written staff recommendation, Bagley-Keene does not prevent the Board from revising and then approving a written staff-recommended action item at a single meeting. Nor does it prohibit the Board or any other state body from taking action solely on the basis of an oral discussion and motion articulated in the course of a public meeting.

At the Board meeting on June 15, 2005, concerns were raised about the absence of staff written material relating to the tax gap agenda item. In particular, members of the public noted that the lack of written material prevented them from evaluating the staff's proposals in advance of the meeting so that they could share their thoughts on them with the Board. The Board then asked staff to meet with interested parties on this issue and report back to the Board at the next meeting. As requested, staff did confer with representatives of the California Taxpayers Association and the California Tax Reform Association on August 12, 2005, and there was a fruitful exchange of views and ideas. During the conference, staff stated that, with respect to all future agenda items initiated by staff, it is committed to prepare and publicly distribute, as early as practicable, written materials that fully describe and explain the staff's proposals and recommendations. The interested parties agreed that this would be very helpful, but they expressed the view that written materials should also be distributed for all other agenda items involving final action on significant policy decisions, including items that are placed on the agenda at the request of a Board member and for which FTB staff may not have been asked to prepare any written material. In addition, the interested parties believe that the Board should not take final action on a significantly modified written proposal until the modification has been reduced to writing and publicly distributed in some fashion. Staff

believes that there are a number of logistical problems that would need to be overcome if all action items must be reduced to written form and publicly distributed before Board adoption, and it is also concerned about the resulting delays in important decisions that could occur in cases where final action must be postponed to the next Board meeting.

In summary, it is clear that current law allows the Board to take final action on any agenda item based solely on an oral discussion and without reference to any written material. Staff has agreed, however, with respect to all agenda items initiated by staff, that it will prepare and publicly distribute, as early as practicable, written materials that fully describe and explain the staff's proposals and recommendations. However, some members of the public believe that the Board should adopt a more restrictive policy of not taking final action on any important matter until the proposed action has been reduced to writing and publicly distributed. Whether the Board wishes to so restrict its existing ability to act is a matter for the Board itself to decide.