

Government Code

Bagley-Keene Opening Meeting Act

11125.1. (a) Notwithstanding Section 6255 or any other provisions of law, agendas of public meetings and other writings, when distributed to all, or a majority of all, of the members of a state body by any person in connection with a matter subject to discussion or consideration at a public meeting of the body, are disclosable public records under the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1), and shall be made available upon request without delay. However, this section shall not include any writing exempt from public disclosure under Section 6253.5, 6254, or 6254.7 of this code, or Section 489.1 or 583 of the Public Utilities Code.

(b) Writings that are public records under subdivision (a) and that are distributed to members of the state body prior to or during a meeting, pertaining to any item to be considered during the meeting, shall be made available for public inspection at the meeting if prepared by the state body or a member of the state body, or after the meeting if prepared by some other person.

(c) In the case of the Franchise Tax Board, prior to that state body taking final action on any item, writings pertaining to that item that are public records under subdivision (a) that are distributed to members of the state body by board staff or individual members prior to or during a meeting shall be: (1) made available for public inspection at that meeting, (2) distributed to all persons who request notice in writing pursuant to subdivision (a) of Section 11125, and (3) made available on the Internet.

(d) Nothing in this section shall be construed to prevent a state body from charging a fee or deposit for a copy of a public record pursuant to Section 6257. The writings described in subdivision (b) are subject to the requirements of the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1), and shall not be construed to limit or delay the public's right to inspect any record required to be disclosed by that act, or to limit the public's right to inspect any record covered by that act. This section shall not be construed to be applicable to any writings solely because they are properly discussed in a closed session of a state body. Nothing in this article shall be construed to require a state body to place any paid advertisement or any other paid notice in any publication.

(e) "Writing" for purposes of this section means "writing" as defined under Section 6252.

March 25, 2002

STAFF REQUEST FOR PERMISSION TO PROCEED WITH PROPOSED ADOPTION OF NEW REGULATION 17000.3

Effective January 1, 2002, the Bagley-Keene Open Meeting Act was amended to require public dissemination of certain writings distributed to the Board members, when those writings relate to an open session agenda item on which the Board may take action at a noticed Board meeting. This new provision is Government Code section 11125.1, subdivision (c). Because this new law is expected to require substantial changes in existing procedures relating to Board meetings, staff is requesting permission to immediately commence a regulation project to establish new procedures as soon as possible. Attached are two definitions that staff has drafted for the purpose of having some language that could be forwarded very quickly to the Office of Administrative Law for formal noticing as a proposed regulation. Staff anticipates that there will be substantial public and Board member interest and comments throughout the course of this regulation project, if it is approved, so that the final regulation to be approved by the Board later this year should be expected to be substantially different than the language initially suggested (see attached).

Because there is some urgency to get new procedures in place, staff is recommending proceeding with the formal regulatory process rather than going through the symposium process.

Section 17000.3 is added to title 18 of the California Code of Regulations to read:

Section 17000.3—Meetings of the Franchise Tax Board.

(a) Definitions.

For purposes of Government Code section 11125.1, subdivision (c), the following definitions shall apply:

- (1) The term "final action" means any vote (other than a vote to defer or postpone action) of the Franchise Tax Board with respect to all, or any part, of an open session agenda item.
- (2) The phrase "writings pertaining to that item" includes only writings that both (a) relate to a specific open session agenda item appearing on the agenda of a Franchise Tax Board meeting that has been noticed to the public pursuant to Government Code section 11125 and (b) have been distributed to all or a majority of the members of the Franchise Tax Board either simultaneously with, or subsequently to, the providing of notice of that meeting pursuant to Government Code section 11125.