CCDA | California Commission on Disability Access

GOVERNOR EDMUND G. BROWN JR.

CALIFORNIA COMMISSION ON DISABILITY ACCESS
721 Capital Mall, Room 250
Sacramento, California 95814
(916)319-9970 (916)319-9976 Fax
(916)735-2929 TTY/TDD

MEMBERS of the COMMISSION
Rocky Burks - Chair
Scott Hauge – Vice - Chair
Tom Ammiano – Assembly Member
Connie Conway – Assembly Member
Ellen Corbett – Senate Member
Jean Fuller – Senate Member

MEMBERS of the COMMISSION
Lillibeth Navarro
Anthony Seferian
Chester "Chet" Widom
Betty Wilson
Guy Leemhuis

Commission Executive Staff
Stephan Castellanos – Executive Director

MEETING NOTICE AND AGENDA
CALIFORNIA COMMISSION ON DISABILITY ACCESS

Meeting Site Location

DEPARTMENT OF CONSUMER AFFAIRS
1625 NORTH MARKET BLVD.
FIRST FLOOR HEARING ROOM
SACRAMENTO, CA 95834

On
July 24th, 2013
10:00 a.m. to 4:00 p.m.
(The end time is an estimate. The actual meeting may conclude earlier)

WEBCAST ACCESS: http://ustre.am/12fn3

TELECONFERENCE # 1-866-662-5089
PARTICIPANT PASSCODE 24114538

Notice is hereby given that the California Commission on Disability Access (CCDA) will hear, discuss, deliberate and/or take an action upon the following items listed in this notice. The public is invited to attend and provide their input or comments.

ITEMS:

1) Call to Order/ Roll Call/ Pledge of Allegiance/Housekeeping Items

2) Comments from the Public on Issues not on this Agenda: The Commission will receive comments from the public at this time on matters not on the agenda. Matters raised at this time may be briefly discussed by the Commission and/or placed on a subsequent agenda.

3) General Business Items:

- **a) Review/Approval of Meeting Minutes – (April 4th 2013) – Action**
- **b) CCDA Introduction of New Commissioner and swearing in of office by Senator Roderick Wright**
- **c) Status of Commissioner Appointments - Update**
- **d) Disabled Access Legislative and Regulatory Developments (AB223- Civil Actions: disable access Authored-R. Olsen and SB550- Accessible housing- Authored- D. Jackson)**
- **e) CCDA Quarterly Budget Report**
- **f) Executive Director Report**

4) Strategic Planning Project

Break For Lunch - 12:00pm – 1:00pm

5) Reconstruction of committees – Establish Charge

- **a) Executive Committee**
- **b) Education Outreach Committee**

6) Bagley Keene Training

7) Demand Letters/Claim Filing Items

- **a) Update of Findings**
- **b) Website Update**

8) Future Agenda Items: The Commission may discuss and set for action on future agendas, procedural and substantive items relating to Commission mandates, projects, responsibilities, Commission policy, and administrative matters.

9) Adjournment of CCDA Meeting

The CCDA meeting is operating under the requirements of the Bagley-Keene Open Meeting Act set forth in Govt. Code Section § 11120-11132. The Act generally requires the CCDA to publicly notice their meetings, prepare agendas, accept public testimony, and conduct their meeting in public unless specifically authorized by the Act to meet in closed session.

- **Meetings are subject to cancellation; agenda items are subject to removal or items may be taken out of order.**
- **The Commission meets under authority of Government Code § 8299.**
- **The Commission may hold a closed session on pending or proposed litigation involving the Commission [Govt. Code § 11126(e)] and personnel matters and performance review relating to the Commission [Govt. Code § 11126(a)].**
- **The meeting facilities and restrooms are accessible to individuals with disabilities.**
- **Each CCDA Commission meeting will provide web casting, teleconference, Braille and large print agendas, and captioning.**
- **Webcast access: http://www.dca.ca.gov/stream/audiocast.asx**
- **Requests for accommodations for individuals with disabilities (sign-language interpreter, assistive listening device, or any other accommodation needed by an individual) should be made to the Commission office no later than 10 working days prior to the day of the meeting.**
- **Technical difficulties with equipment experienced prior to or during the meeting preventing or inhibiting accessibility accommodation is not cause for not holding or for terminating the scheduled meeting.**
- **If paratransit services are needed, they may be contacted at (916) 429-2744, TDD (916) 429-2568 in Sacramento. Sacramento Regional Transit (www.sacrt.com) has public transit available the day of the meeting. For alternate routes contact Sacramento Regional Transit at (916) 321-BUSS (2877); for hearing impaired (916) 483-HEAR (4327).**
- **For Los Angeles Public Transit (www.metro.net) or (323) 466-3876 for bus and rail transit information. Riders with hearing or speech impairments use the California Relay Service – dial 711, and then the number you need. For paratransit services (www.asila.org) or if you ARE a certified access services rider within Southern California and would like to make a reservation call: 1-800-883-1295, TDD 1-800-826-7280. If you ARE NOT a certified access services rider, contact customer service at 1-800-827-0829, TDD 1-800-827-1359.**
- **For the latest information on meeting status, check the California Commission on Disability Access Web Site: http://www.ccda.ca.gov/.**
- **Questions regarding this notice and agenda may be directed to Steve Funderburk, Office Administrator at (916) 319-9974 or at 721 Capitol Mall, Room 250, Sacramento, California 95814.**

3) General Business Items:

a) Review/Approval of Minutes

- Chair Burks is to contact Commissioners to appoint them to the Standing Committees.

8. DISABLED ACCESS LEGISLATIVE AND REGULATORY DEVELOPMENTS

a. AB 223 – Civil Actions: Disabled Access – R. Olsen

Executive Director Castellanos stated AB 223 is intended to expand the SB 1608-SB 1186 measure to local government. Staff will track it and bring updates to the Executive Committee.

b. SB 550 – Accessible Housing – D. Jackson

Executive Director Castellanos stated SB 550 is still referred to Committee. Staff is researching the impacts on this bill and will track it and bring updates to the Executive Committee.

c. AB 897 – Disability Access Fees and Information – R. Wagner

Executive Director Castellanos stated AB 897 seeks to rescind the one dollar charge that was in SB 1186. At the local level, it was intended to expand the use of the CASp and assist local businesses and others. At the state level, the state architect was to use the $0.30 they collected out of every dollar to defray testing and certification costs and to work with the DOR and the CCDA in the development of educational tools. In talking with Ms. Dick-Endrizzi, their building department did not want to use it, and it does not amount to much money at the local level, but at the state level, that small amount of money would be very helpful for the state architect and the CCDA in pursuing this Commission's mission. Staff will track it and bring updates to the Executive Committee.

Action Items

- Staff is to these bills and bring updates to the Executive Committee.

9. FUTURE AGENDA ITEMS

Chair Burks asked Commissioners to submit future agenda items to staff.

10. ADJOURNMENT OF CCDA MEETING

MOTION: Commissioner Navarro moved to adjourn the April 4, 2013, California Commission on Disability Access Full Commission meeting. Commissioner Wilson seconded. Motion carried unanimously.

Chair Burks adjourned the meeting at 3:15 p.m.

that everything is in place prior to the end of the fiscal year so that money can be spent out of this budget year's encumbrance.

Commissioner Navarro stated the DOR changed the ILC's yearend from October to September to avoid anxiety over the passing of the state budget. She asked if that was a feasible possibility for the Commission. Executive Director Castellanos stated how the Commission plans and spends money needs to be planned strategically so that, if there is a lapse, the Commission is not going to suffer.

Commissioner Wilson asked if there are plans to hold any meetings outside of Sacramento. Chair Burks stated the objective is to go statewide, but, due to fiscal constraints and the restructuring of the Commission statutorily, it may not be feasible, at least for the July meeting.

Executive Director Castellanos stated meeting outside of Sacramento is a big issue and staff will be studying the cost and trying to fit it into the current budget structure. It is important to reach out and meet through the state, to know what people are doing in cities such as Los Angeles and San Francisco, and to have the opportunity to meet there. Last year's meeting in Los Angeles was very successful and he stated he would like to replicate that. He stated his goal is to have more meetings out of the year, but it is hard to commit to that. He stated the October full Commission meeting may be a possibility and staff has time to do some planning.

Action Items

- No action items

7. CCDA COMMITTEE RESTRUCTURING - DISCUSSION

Chair Burks stated, under the SB 1608 structure, the Commission had five Standing Committees: the Executive, Civil Enforcement, Checklist, Accessibility Enhancement, and CASp and Education Committees. The CCDA Bylaws allow the Commission to change the Committee structure and, with the passage of SB 1186, it is the recommendation of the chair to reduce the Committees to two Standing Committees: a joint Executive Legislative Committee to carry out the functions of the Commission in the absence of the full Commission, and an Outreach and Education Committee.

Executive Director Castellanos added this restructuring to two Standing Committees does not prevent the Commission from establishing working groups or task force for any necessary items or projects.

Commissioners Navarro and Wilson agreed with the chair's recommendation.

Chair Burks stated he will be contacting Commissioners and looks forward to their involvement with this restructure.

Action Items

There are challenges that the Commission faced that created barriers, such as the Commission being an independent agency and not having anyone on the inside with knowledge of the constructs, technical details, and requirements of the Commission as an independent agency. The prior executive director, Staff Member Jemmott, and Lavonia Wade were given the responsibility for knowing these things without having any prior experience or guidance. Executive Director Castellanos has shared that without having the ancillary support it makes it difficult to develop a new entity. That is why things operated slowly in the beginning.

Commissioner Navarro stated the Accessibility Enhancement Committee wanted to put out a survey to help gauge the state of ADA compliance in business and local government, and how to improve the dialogue between the disability and business communities. There were many obstacles; therefore, her Committee was unable to complete much of their report. But they had a plan. When comparing SB 1186 to SB 1608, she stated she sees the old bill inside the new one. The direction of the Commission was changed to developing educational materials and information to promote and facilitate disability access. The Commission has not tracked it, but since it is receiving the litigation claims daily, those could be charted to look at specific areas, and, based on that research, the Commission could develop the educational materials.

Chair Burks agreed that there was a large set of charges that put the Commission in a position to try to do too much with an incomplete structure. There was an expectation that the Commission would do all of the things it was asked to do, but when the Legislature saw that could not happen, they narrowed the scope of the Commission's functional goal.

> **MOTION**: Commissioner Navarro moved to empower the chair and the vice chair to finalize the report of the history and accomplishments of the California Commission on Disability Access, due to the Legislature on April 15, 2013. Commissioner Wilson seconded. Motion carried unanimously.

Action Items

- No action items

6. CCDA QUARTERLY BUDGET REPORT

Staff Member Jemmott summarized the January-February budget report. She explained that the Department of Finance corrected erroneous monthly automatic transfer charges to the Commission for the I.T. Department for a total of $66,000.00. That amount has been credited and was shown in brackets in this report.

Chair Burks stated he wanted to ensure funds for necessary office equipment were encumbered before June 30th, as this was not adequately addressed before. Executive Director Castellanos assured him that the office needs have been addressed. He stated it is up to the Commission to plan in advance and to ensure

- Accomplishments during the time without an executive director. It is important to mention that there was progress made at staff level despite the fact that there was no executive director.
- Budget History. This section has not been completed yet. Some of the administrative issues will be tied to the budget history because it is a component of growth and development of the Commission.
- Meeting organization. One other achievement is how public meetings are structured, how the Commission communicates with its constituents, and how the tools the Commission uses produce a great deal of success. It is still a work in progress and there is room for improvement, but a meeting of this type can be used as a model for other public meetings. The meeting organization itself is an accomplishment.
- Successes and valuable contributions. Executive Director Castellanos has not only spoken to past Commissioners but also relied on the public record - the minutes and the agenda for the full Commission and Committee meetings since the founding of the Commission – trying to pull out successes and valuable contributions. The report contains what is already part of public record. He stated it may not be as artfully stated in some cases, and he asked Commissioners to fill in missing areas or the subtleties of the discussion that should have been included. He stated it was evident from the record that there was enthusiasm, hard work, and discussion that, even though it did not bear fruit at that time, has a great deal of value and provides a foundation. The strategic planning that will be contained in this report will take advantage of all of this history in coming to a conclusion on what the agenda will be for the Commission going forward; that agenda will be mentioned briefly in this report.
- Appendix to the report that will include documents, policies, and information on the checklist and other pieces that were prepared by the Commission or by staff regarding evidence or a visual example of the work that is underway or has been completed.

Commissioner Questions and Discussion

Chair Burks asked Commissioners to look at the report with a critical eye and provide feedback as soon as possible, and to consider sharing anecdotal information of the successes and challenges being faced by this Commission in earlier days, what each Commissioner has done or participated in, but was not captured in the public records.

In spite of challenges, there is excitement in the opportunity to break ground, as the city and county of San Francisco is doing, and to move forward to address issues. Chair Burks stated Ms. Dick-Endrizzi admitted that their existence and their ability to move forward in their development is a direct outcome of the work of the Commission.

Chair Burks stated government moves very slowly, but he is beginning to see more collaboration and cooperation through others to help the Commission meet its objectives. Members of the Legislature have seen the Commission's difficulty and are providing guidance and direction.

Commissioner Navarro echoed Chair Burks's appreciation for Staff Member Jemmott and Lavonia Wade, who carried on during those difficult months without an executive director. She recommended that Executive Director Castellanos contact Erica Jones, the director of the Pacific ADA Center; the Pacific ADA Center holds ADA trainings and can report what they see as problem areas. Executive Director Castellanos stated they are on his contact list.

Executive Director Castellanos encouraged Commissioners to email the names of individuals and organizations in Commissioners' communities, statewide, or throughout the nation that they think would be important to have a relationship with, so that the Commission can reach out to them.

5. LEGISLATIVE REPORT DRAFT - DUE APRIL 15, 2013

Chair Burks stated this is a draft of the report to be submitted to the Legislature on April 15th. It was his intent as the chair to ask the Commission to empower the chair and the vice chair to finalize this report. In the absence of that, he has set up a tentative conference call on April 12th. He asked Commissioners to keep this process in mind as the executive director presents the draft report.

Executive Director Castellanos stated this is a status report to the Legislature that lists the history and accomplishments of the Commission since its creation. It is organized in a straightforward manner:

- Outline of the authority of SB 1608 and SB 1186.
- History and mission of the Commission since it began and how the change in mission was directed by legislation, completed with the assistance of the CBSC and Jim McGowen.
- Past and present membership and makeup of the Commission.
- Accomplishments reported by Committee, since the Commission decided to organize around Committees that tied charges back to the Legislature.
- Indication if required reporting was not met prior to the adoption of SB 1186, as some of the requirements that were stipulated in SB 1608 were changed by SB 1186.
- Expanded description of what SB 1186 means for this Commission in the future, what the Commission already underwent, and what is currently underway, specifically regarding the contents of the CCDA website and strategic planning.

Staffing. Executive Director Castellanos stated staff greatly misses Lavonia Wade, who has been promoted, and hopes to fill her position with someone equally talented and committed to the Commission. They wish Lavonia well and know she will do well wherever she goes. Staff has begun the process of going through the initial review of applications.

Volunteers. Executive Director Castellanos stated this item has been postponed due to the search for the staff replacement, but he has gotten the DGS's guidance on how to proceed in bringing in volunteers, retired annuitants, and intermittent seasonal assistance, and he hopes to begin this process soon.

Office move. Executive Director Castellanos stated the office move is complete; he thanked the DOR for their support and assistance in the move.

Documentation. Executive Director Castellanos stated the Commission continues to receive claims as mandated by SB 1186. Staff will begin gathering data on these claims after the submission of the April 15th report to the Legislature, and then will post their findings on the CCDA website by July 15th as mandated. They receive several claims per day and are at over five hundred now. He stated he was disappointed in the continued volume, as he expected there would be a decrease as a result of SB 1186. He is not sure what that means yet. He thanked Commissioner Seferian for his willingness to bring in legal interns for the assessment effort on the claims and letters received. Staff will begin to work with him and the Department of Justice (DOJ) interns soon and hopes to gain a better understanding of what is contained in this documentation.

Commissioner Questions and Discussion

Commissioner Wilson stated her appreciation for Commissioner Seferian's help with the interns, because that assistance is necessary to move forward and to better understand the documentation the Commission is receiving.

Commissioner Navarro stated every ILC has systems change advocates, so there is a large network of systems change advocates in different communities all over California. She suggested that systems change advocates could help the CCDA's efforts and asked Executive Director Castellanos if he has discussed this with the DOR. Executive Director Castellanos stated he will add that to the agenda for his meeting with the DOR on the 11th.

Chair Burks stated it is nice to have his friend and colleague as the executive director to accomplish the mission of this organization, but it is also nice to have a friend and colleague in Staff Member Jemmott, who worked hard in the interim during the absence of an executive director. He stated his appreciation for Staff Member Jemmott and Lavonia Wade, without whom the Commission could not have accomplished the things it did. He stated the executive director has made it clear that Staff Member Jemmott plays an instrumental role with this Commission.

of communities around access. San Francisco is a "poster child" for what local government can do, and the Small Business Commission has taken this on as a significant agenda item. He is finding more examples like San Francisco, and will meet with the leadership of other local communities to learn more about what they are doing. He stated he would like to meet with the leadership in Commissioner Wilson's and Commissioner Navarro's communities. He plans to take the lessons from California's major communities and share them as the Commission becomes more of a hub for these kinds of resources.

The California Access Specialist Institute. Executive Director Castellanos stated he continues to discuss issues with the CASI - most recently, the CASI's intent to further develop the checklist that this Commission worked on a year or two ago. Staff has agreed to work with them as will the DSA. He stated he will report back to the Commission on how this is proceeding and what the Commission's involvement will be.

The American Institute of Architects, California Council (AIACC). Executive Director Castellanos stated the architects have been very generous and continue to provide support to this Commission. He recently shared with them one of Ms. Dick-Endrizzi's concerns, regarding the role of architects in helping businesses understand what compliance is. He stated Ms. Dick-Endrizzi has noted that a number of architects are telling businesses, if they meet requirements under the hardship provision of the code, that they have satisfied their access requirements, but that is not the case. The AIACC has agreed to work with this Commission to better advise clients. This is a problem that needs to be corrected on both the client side and the professional side.

Legislation. Executive Director Castellanos stated Assembly Bill (AB) 897 by Wagner, disability access fees, seeks to rescind or repeal the SB 1186 provision of the $0.30 fee coming to the state architect. He stated he will refer this issue to the Executive Committee for further research.

CCDA Website. Executive Director Castellanos stated the website is one of the critical initiatives at the moment, as it can be so much more in terms of providing information and developing a network and a community of people involved in the issues this Commission is involved with. This Commission was intended to create that dialogue, and the website will further extend the sense of community and network and the sharing of best practices, trends, and issues.

Strategic plan. Executive Director Castellanos stated the strategic planning effort is moving forward and staff is exploring methods of retaining a consultant. He soon hopes to make a recommendation to the Executive Committee about how to proceed. His goal is to move something forward before the end of the year so next year will begin with a solid plan that is supported by the entire Commission.

which is to identify resources. Every Commissioner comes to this Commission with a great deal of knowledge and a level of commitment to the issues this Commission has been charged with. Staff plans to ask each Commissioner to update the Commission in a public session, just as Commissioner Navarro did today. It is important to share experiences and levels of commitment, not only privately with other Commissioners, but with the public. What Commissioners bring to the Commission is a fundamental resource that should be shared, not only to get to know each other better, but to better address the issues the Commission will have to address.

The Department of the State Architect. Executive Director Castellanos stated he has continued to meet with the state architect and his deputy over the access program and the CASp program. Ms. Dick-Endrizzi mentioned some of the issues San Francisco is encountering with the CASp and pointed to the need for developing a standard. The CASI is addressing the issues of the variability and inconsistency of the service provided by the CASp. Executive Director Castellanos stated he is continuing to discuss these issues with the DSA. He will bring information back to the Commission, as will Commissioner Widom, as more information becomes available.

The Department of Rehabilitation. Executive Director Castellanos stated, along with the DSA, the DOR is an organization that is mentioned in SB 1186, and he has been meeting regularly with both agencies. He is negotiating with the DOR for their provision of needed legal services. They have agreed and committed to a number of hours per month; the Commission's agreement with the DOR just needs to be amended to add these services. Executive Director Castellanos and the DOR have discussed the $0.30 fee per business license that the state architect will be managing; he will meet with the DOR to put together an agenda for an April 24th meeting with the state architect to identify joint efforts and use of funds in order to provide educational tools.

The California Building Standards Commission. Executive Director Castellanos stated Jim McGowan, the executive director of the CBSC, continues to be of tremendous assistance. He has provided his notes to be included in the report due to the Legislature on April 15th about the history and accomplishments of the Commission since its founding. The CBSC was instrumental in the early days of the CCDA, so their perspective is essential to a complete report.

The Department of General Services (DGS). Executive Director Castellanos stated the Commission's relationship with the DGS continues as they provide services in the area of budget, HR, and IT. He has been meeting with the DGS, along with the state agency that deals with technology, to upgrade the CCDA website, which he is hopeful will be available this fall.

California's major communities. Executive Director Castellanos intends to work with the local government in the city and county of San Francisco to develop a network

active participation and real employment. Whatever is lacking in programs and services to elevate their socioeconomic life should be part of the business community to fill.

- The independent living centers (ILC). The ILCs help the disability community survive by applying for survival benefits and appealing their denials; monitoring the government and community to ensure that nothing else hurts them - their access and their opportunities as well as the safety net already teetering in the balance; finding them jobs; finding accessible, affordable housing and caregivers; providing counseling away from depression towards hope; navigating local resources to foster independence; and equipping the disability community with independent living skills.

Commissioner Navarro stated there are twenty-eight ILCs in the state of California, 333 nationwide, and more are being created in other countries of the world. The ILCs and the ADA are among the best exports with an American brand. The ILCs are never content with basic survival. Their work is not done until, with the help of the greater society to fully implement the ADA, the business community can be fully won as a solid partner in employment and more doors of opportunities and participation are opened wide.

Commissioner Navarro ended her presentation with one of her favorite quotes, "To boldly go where everyone else has gone before": to have the intelligence to think it, the courage to declare it, the audacity to demand it, and the perseverance to never stop fighting for it.

Commissioner Questions and Discussion

Commissioner Wilson suggested more training be done at the ILC level statewide on how to own property. She has found that many people do not know how to take care of the negotiation of business, because they have not had the opportunity and may not have the background or the skills. This would be a benefit to the community.

Chair Burks expressed his appreciation for the ongoing commitment and effort that Commissioner Navarro and her staff undertake to improve the lives of people with disabilities in the ILCs. The ILCs have helped tens of thousands of people achieve the opportunity to stay out of an institutional setting and in their own home, being the master of their own future.

Action Items

- No action items

4. EXECUTIVE DIRECTOR REPORT

Outreach to Commissioners. Executive Director Castellanos stated he has been reaching out to Commissioners on a regular basis for a number of reasons, one of

Commissioner Navarro referenced a comment Chair Burks made earlier, that it is not "disabled people," but "people with disabilities." The disabilities are the circumstances the disability community lives with, but those disabilities do not define their humanity. Doctors may define their medical conditions, but what the disability community can and cannot do is largely defined by:

- The environment. The disability community depends on the availability of ramps, elevators, accessible restrooms, or accessible work places, which is why the ADA has the ADA Accessibility Guidelines (ADAAG) component and the regulation standards for the upgrading of the built environment in both government and public accommodations.
- The available technology. This is still part of the changing environment; how much it changes depends on the willingness of people in businesses and entities to make use of the technology available to open doors to participation and enjoyment of goods, services, and opportunities of engagement.
- The attitude of openness and acceptance. Even with the perfect environment or complete upgraded technology, if there is resistance to opening the opportunities for people with disabilities to use them through employment and other modes of participation, the obstacles are just as foreboding as physical obstacles. These discriminatory attitudes may not be blatant, but they are there and they are just as harmful to the struggle for equality. Therefore, there is the need in the disability struggle for justice and fairness to spot the obvious and subtle hints of discrimination.
- The real expenses that come with disability. The disabled community strives to meet daily expenses themselves. The safety net built over the years is there to sustain the basic survival of people with disabilities. The expenses involved with having a disability is one of the areas that businesses can be concerned about, but it is a myth that those expenses are costly, because there are tax incentives for employers of people with disabilities. The Department of Rehabilitation (DOR) is there to assist people with disabilities who want to work with the things they need. In accommodating people with disabilities in jobs, there are other government agencies, their own families, and the disabled person themselves that can mitigate the expenses that come with a disability.
- The barriers to work. The supplemental security income (SSI) and the social security disability income (SSDI) are employment punitive. They ought not to be, but the gatekeepers of social security do not have one interpreting agent of those regulations. Each social security office interprets the monthly survival stipend differently. Many people, because of the fear of losing that safety net, choose to stay at home. They are caught between a struggle to get away from forced poverty and a life of

- Staff is to email Ms. Dick-Endrizzi's PowerPoint presentation to Commissioners.

h. Presentation - Lillibeth Navarro, Executive Director and Founder of Communities Actively Living Independent and Free

Lillibeth Navarro, the Executive Director and Founder of Communities Actively Living Independent and Free (CALIF), a nonprofit independent living center serving the disability population in central Los Angeles, stated, while she is an advocate for disability rights, she is also a businesswoman and fully comprehends the real life factors, the successes and failures of owning a business. She, as part of the business community, is bound to comply with the federal and moral standards of disability rights laws, such as the ADA. At the same time, she feels more emotionally invested in the compliance aspects. She stated this presentation will be from the perspective of the "two hats" she wears: the disability community she represents, and the need to partner with members of the business community.

She stated she is a romantic by nature, loving the arts and letters. Writing is her passion followed closely by teaching and business. Upon graduating from high school, she found herself at a "fork in the road" between the arts and letters and a business science college major. The simple yet life-changing advice from her father rings true today: "Arts and letters will not feed you in this environment; business will." It is the business she runs today that feeds not only her and her family, but twenty-four staff members.

She graduated with a business management degree in the Philippines and worked for three years when she was offered a fellowship to study journalism and public relations at the University of Southern California. She became involved in the disability rights movement in Los Angeles and learned the radical and noble ideas of disability rights as it relates to access to mainstream society, education, communication, public accommodation, and employment.

Having experienced discrimination repeatedly in the work place, she became involved in Fight for Access with public transportation for eight years, being arrested until the public transportation organizations conceded to comply with regulations and provide accessible transportation. Shortly after that, she fought for the ADA in 1990. In this context, by use of the Internet, Commissioner Navarro illustrated the importance of the civil rights struggle for people with disabilities.

Regarding the Civil Rights Act of 1964, Martin Luther King, Jr. being arrested and doing marches was significant to outlaw discrimination against people of color, ethnicity, religion, and gender. But they had forgotten a big community - millions of Americans with disabilities. Because the disability community was excluded from the Civil Rights Act of 1964, they had to push for their own civil rights.

an advocate, and the OSB program inspires her. If others in the disability community see this, they can speak to that. She asked if the disability community in San Francisco is supportive of the OSB's work and if there are any members of the disability community on the OSB staff.

Ms. Dick-Endrizzi stated her staff is very small, and she does not have individuals with disabilities on her staff, but the city has the Mayor's Office on Disability. Its primary role is to manage disability access with regards to local government. The OSB works closely with the Mayor's Office on Disability, using them as well as some of the disability rights organization as a sounding board.

Ms. Dick-Endrizzi added that she is in a unique position. She appreciates individuals with disabilities and their needs, and also understands small businesses. She does not believe government has done a very good job of informing businesses of what they need to do. There are gaps, and it is necessary to discover where those gaps are and where they are making it difficult to make businesses accessible. Businesses are trying to navigate the complexities of regulations, obligations, and compliance, but eventually they just walk away, because they are not receiving any help. She stated the government needs to take responsibility for the fact that there are many small businesses that are not accessible. It needs to be proactive in closing those gaps. SB 1186 and SB 1608 are the first steps towards this.

Commissioner Seferian asked how the OSB was informed of the results of the over 400 lawsuits filed since 2002. Ms. Dick-Endrizzi stated they do not know all of them, but lawyers who are working with businesses informed the OSB of the averages. These lawyers attend the OSB presentations to communicate the laws for businesses.

Commissioner Seferian asked if the OSB keeps a list of the cases and what each one settles for. Ms. Dick-Endrizzi stated they do not have that capability. They keep up on cases by what they hear from merchant associations and businesses that contact the OSB offices or their attorneys.

Commissioner Navarro asked how the CCDA can help bring those things about. Ms. Dick-Endrizzi stated she would appreciate the Commission's advocating at the state level, and suggested Commissioners advise Senators and Assembly Members who might carry forward a bill to make some of those changes.

Chair Burks stated the goals of the OSB and this Commission are parallel, and he looks forward to working with the OSB in the future. He commended the OSB and the city and county of San Francisco on their groundbreaking work. He stated the OSB has looked at this in a comprehensive way to give every individual an opportunity to participate unimpeded.

Action Items

connected with the chamber have the information and know the resources; but the problem lies in the minority of small businesses that have no connections to the chamber or to merchant associations. The OSB reaches out to these businesses individually. In going door-to-door to speak to businesses about this problem, Ms. Dick-Endrizzi has learned there is a lot of fear: fear that it will cost them a lot of money, fear that the Department of Building Inspection might come, and fear of what that would cost them.

Commissioner Navarro asked if the OSB has ever put together a webinar that could work with different communities where businesses, cities, and other jurisdictions could possibly pay to participate.

Ms. Dick-Endrizzi stated small businesses are the last to know this information. The OSB is happy to provide assistance to any municipality, but they have not yet done a webinar. It is something the OSB could possibly do with the additional funding that SB 1186 provides for the local municipalities. The OSB is committed to working with accessibility and supporting the civil rights component.

Commissioner Wilson stated people look to California as a model. She suggested holding a statewide conference, by webinar or other medium, to bring cities together.

Commissioner Navarro stated, if the CCDA office mirrors the OSB program, it could inspire the entire state. The OSB program is the only one in the county, so it could be exported to other states.

Executive Director Castellanos publicly thanked Vice Chair Hauge for introducing him to Ms. Dick-Endrizzi. He stated, as a result, he was invited to attend the mayor's Commission on Small Businesses, where he entered into discussions about disabilities and small business, and what they are doing in San Francisco to meet the challenges of both the business community and the disability community in a collaborative way.

He stated he is beginning to reach out to municipalities throughout California. The Commission's task is to develop educational tools, but there are so many people out there trying to do great work that the important thing to do is to create a community to share information about what the Commission is doing, the policies that are being adopted, and what the political leadership is doing. He added that he hopes, with the redesign of the website, the Commission will be able to be the hub of part of this material statewide, which the Legislature has asked the Commission to do. There is a wealth of material throughout the state, and San Francisco provides tremendous leadership. Executive Director Castellanos hoped to bring more presentations like this to the Commission in the future.

Commissioner Navarro stated she likes that the OSB is interested in the civil rights act. People with disabilities must also be active partners. She stated she is

Ms. Dick-Endrizzi summarized the OSB "wish list":

- To improve accessibility projects under the provisions of CEQA, in order to help prevent local jurisdictions from frustrating the efforts of small businesses to provide accessibility.
- To establish legal requirements for all architects who have tenant improvements under the valuation threshold to be required to inform the client that they may not be fully accessible and meet all federal ADA requirements.
- To require businesses to get a permit for tenant improvements under the valuation threshold.
- To require businesses to have a CASp inspection and report prior to issuance of the permit, so that businesses know they have an ongoing obligation.
- To require all landlords and small businesses to obtain a CASp inspection.
- To provide tax credits and exemptions at the state level as an incentive.
- To mend the disconnect at the federal level, such as the Small Business Administration (SBA), where they could reach out to small businesses and provide training classes on ADA obligations in terms of public accommodation.
- To provide technical assistance to small businesses at the federal level, perhaps working with local governments and the Community Block Grant dollars.
- To receive acknowledgement at the federal level that it recognizes the valuation threshold as California's definition of "readily achievable."
- To establish guidelines of what is a technical violation as opposed to a civil rights violation.
- To increase the tax credit and deduction that the federal government established in 1992.

Commissioner Questions and Discussion

Commissioner Navarro stated it is exciting to have a model to show that this could happen statewide if cities will collaborate. She asked how the OSB is received by the chamber of commerce and if the chamber has an active part in the OSB's efforts.

Ms. Dick-Endrizzi stated the chamber of commerce is supportive of the OSB, and the OSB relies on the chamber as they are a key partner in disseminating information. She added that the chamber hosts meetings in various merchant districts and always invites the OSB to attend and to enter into the discussion. Because of the chamber's partnering with the OSB, businesses that are

Ms. Dick-Endrizzi estimated that the OSB will take in approximately $65,000 per year for business registration fees resulting from Senate Bill (SB) 1186. The San Francisco Department of Building Inspection has determined they will not utilize those funds and will instead help businesses to get a CASp inspector or to do tenant improvements. The OSB's goal is to utilize these funds to help reduce the financial barrier to CASp inspections.

A new law effective January 1, 2013, requires a landlord with less than 5,000 square feet of commercial space to have a Disability Access Obligation Notice and the OSB brochure at the time of lease. The intent is to ensure that businesses are informed and to encourage dialog between the landlord and tenant. If the requirement is to make the entryway accessible at a cost of $15,000, the landlord and tenant will enter negotiations around that accessibility. Even though SB 1186 mandates landlords to inform tenants if there has been a CASp inspection or not, often those conversations do not occur.

Ms. Dick-Endrizzi stated the OSB has been encouraging the Historical Preservation and Planning Departments to make accessibility improvements, since the city departments do not seem to prioritize accessibility. According to the California Environmental Quality Act (CEQA), all buildings constructed over 50 years ago and possessing architectural or historical significance may be considered potential historic resources, and proposed changes to these buildings may require some level of environmental review. The Historical Preservation and Planning Departments have secured funding at the state level to do architectural drawings to develop guidelines for entrances to buildings, so that businesses do not have to go through the discretionary review.

Ms. Dick-Endrizzi stated the architects have to be part of the process to ensure that businesses are informed of what is ultimately their responsibility. The OSB would like to see a legal requirement that architects inform their clients that they may not be fully accessible and may not meet federal and/or state regulations. They would also like to see a requirement that businesses for sale provide an inspection report done by a CASp inspector so prospective buyers will understand their liability for any areas of noncompliance.

There are inconsistencies in the standards for CASp inspections, and municipalities do not give CASp inspectors the ultimate authority in determining resolutions between conflicting agencies. Also, there needs to be established guidelines on the difference between a technical violation and a civil rights violation.

Under SB 1186, the permitting process exceeds the thirty- to sixty-day limit required for construction. San Francisco businesses require additional time, due to the unique nature of topography and building stock of the region, for proper permitting and to make the necessary improvements.

assessment program for outreach and education to five of those neighborhoods that have high numbers of lawsuits.

The OSB worked with the micro-lender, Opportunity Fund, to establish a loan program for businesses to do their CASp inspection or tenant improvements. To date, six businesses in San Francisco have applied for that loan, and some businesses outside of San Francisco have accessed the program as well.

The OSB has a partnership with the San Francisco Bar Association to set up affordable initial legal services, a 30-minute consultation for $35, to help businesses understand the proper course of action when they receive a lawsuit or to know how to respond to "serial plaintiff" letters. Over 220 businesses have utilized this assistance on ADA-related cases.

In January 2011, the OSB launched a comprehensive program for small businesses, which informs businesses of the federal tax credit and deductions they can take annually; it also provides a brief overview of the federal and state laws, the CASp program, why it is important to obtain a CASp, what to look for in the CASp inspector, and a list of CASp inspectors. The OSB contacts the CASp inspectors listed on the Department of the State Architect's (DSA) website once a year. The DSA and the Certified Access Specialist Institute (CASI) do not distinguish between government CASp inspectors and private CASP inspectors. Ms Dick-Endrizzi stated California needs CASp inspectors who can provide inspections in other languages.

Ms. Dick-Endrizzi stated the OSB fulfills the state and federal obligation to inform businesses, but stated the OSB website needs more work to help businesses navigate the site.

The OSB launched the ADA Small Business Assessment Program in January 2013, which is a pilot program that assists businesses with assessments. The OSB obtains federal dollars for the Façade Improvement Program through the Community Development Block Grant Program, and is working with the Asian Neighborhood Design that does the architectural work for the Façade Improvement Program.

The OSB designed a brochure to assist in door-to-door informing of businesses about available assessments. The brochure rates barriers from "low barriers," which are readily corrected, such as by moving things that might interfere with strike site clearance, like a waste basket next to a toilet, to "high barriers," which include the more difficult structural elements.

Since the program launch in January, seventeen businesses have applied, eight have been eligible for grants, and nine have had high barriers. In these situations, because Asian Neighborhood Designs does not have a CASp, the OSB recommends they get a CASp inspector referral.

The mayor appointed Ms. Dick-Endrizzi as the executive director in May of 2009. Prior to this, she worked in retail for thirteen years, with a company that grew from three stores to eleven stores.

The OSB has seen suits ranging from businesses that were open pre-1992 to recently-opened businesses, addressing different issues, such as how or where or why there was not an understanding of compliance. Many of these businesses are minority-owned restaurants.

San Francisco businesses do not receive demand letters. Ms. Dick-Endrizzi's office has noted a trend of letters from what she has termed "serial plaintiffs," which state they visited the establishment and provided a list of barriers. If the business owner or landlord does not respond, they visit one or two more times, providing another opportunity for the business owner or landlord to respond. If not, it is followed by a lawsuit. These "serial plaintiffs" tend to work in what she termed "neighborhood commercial districts," wherein they sue a group of businesses and move to another area, then return within a year to target new businesses.

Since 2002, approximately 475 small businesses have been sued with an average settlement of approximately $20,000 each ($12,000 to the plaintiff's attorney and $8,000 to the plaintiff) for a total of roughly $9.5 million. That $9.5 million is prior to the businesses doing any tenant improvement or paying for legal representation.

Since 2009, the OSB has conducted sixty-six presentations around disability access, regulatory requirements, support structures, and OSB services.

In January 2011, the OSB launched a comprehensive program to include a loan program and legal assistance.

In February 2011, the OSB sent a letter to over 3,000 food establishments informing them of their obligations, warning them of the potential "drive-by lawsuits," and asking them to contact the OSB for resources.

The OSB funds economic development organizations to provide technical assistance to new businesses. Although new businesses are working with architects doing improvements under the valuation threshold, many are still noncompliant. In January 2013, the OSB made it a mandatory requirement for the city-funded economic development organizations to educate their clients on their obligation for disability access, what resources are out there, and how to assess the facilities they are renting.

Also in January 2013, the OSB launched the Small Business Assessment Program through the mayor's Invested Neighborhood Program. The mayor has targeted twenty-five neighborhoods throughout the city, primarily towards the business districts. The OSB secured a small amount of funding to develop an ADA

Chair Burks thanked Commissioners for their support of his and Vice Chair Hauge's leadership and ensured Commissioners of Vice Chair Hauge's willingness to continue on as vice chair.

Commissioner Navarro asked how Commissioners can help to accelerate the reappointments or the efforts to achieve a full Commission.

Chair Burks stated the Commission has five openings. The governor's office, the Senate, and the Assembly have mentioned they do not have a pool of applicants to select from, but only have a small number. He recommended Commissioners help by directing potential applicants to the appointments page of the governor's website to fill out an application, or by asking them to telephone Senator Steinberg's or Assemblymember Perez's offices to begin the application process.

Commissioner Wilson suggested adding an announcement on the CCDA website welcoming applications for Commissioner appointments and directing them to the right channels to begin the process.

Chair Burks agreed and asked staff to make those additions to the CCDA website; he also suggested contacting business and disability organizations on the mailing list to announce that Commissioner appointments are being considered and applications are sought for the appointments.

> **MOTION**: Commissioner Wilson moved to extend the leadership of the California Commission on Disability Access as it currently exists by suspension of the bylaws, up to but not-to-exceed the end of the full Commission meeting on October 16, 2013. Commissioner Navarro seconded. Motion carried unanimously.

Action Items

- Staff is to add an announcement to the CCDA website welcoming applications for Commissioner appointments and directing them to the right channels to begin the process.

g. Presentation - Regina Dick-Endrizzi, Executive Director of Office of Small Business Commission for the City of San Francisco

Regina Dick-Endrizzi gave a presentation on the programs San Francisco has put together in response to small business lawsuits and the programs informing and educating small business owners on ways to increase accessibility in their businesses.

She stated it was through Vice Chair Hauge's efforts that San Francisco has a Small Business Commission, and, as of 2008, the Office of Small Business (OSB). The Small Business Commission reviews policy matters and legislation that affects small businesses, and hears issues that are before small businesses. The OSB is the support structure for small businesses, where business owners can come to City Hall to learn the licensing and permitting regulations.

Executive Director Castellanos added that confidentiality is important, because there are names and sensitive information included in the collected material, particularly in letters when there has not yet been a claim filed and the information is not a matter of public record. The CCDA is a state agency and is required to comply with this as a matter of policy. He added that everyone does business differently, and there are times when it would be helpful for staff to not only rely on the statute, but also on policy.

Commissioner Questions and Discussion

Commissioner Navarro asked about the frequency of requests and how they impact the operation of the Commission.

Executive Director Castellanos stated there have only been one or two requests per week so far; staff is able to satisfy those requests fairly easily. It has not been a burden, but he has been involved in state service in the past where it has taken a great deal of time and effort to comply with the requests.

> **MOTION**: Commissioner Wilson moved to send the California Commission on Disability Access Public Records Act Requests Policy to the Executive Committee for ratification and implementation. Commissioner Navarro seconded. Motion carried unanimously.

Action Items

- The policy is to be brought before the Executive Committee for ratification and implementation.

f. Commission Chair and Vice Chair Election

Executive Director Castellanos stated there is currently one Commissioner representing the business community and three Commissioners representing the disabled community. The Commission has not maintained a regular election of officers for the last several years. This item was placed on the agenda by staff to comply with the bylaws, but Commissioners need to make a decision to either comply with the bylaws or, as he and Chair Burks recommend, suspend the bylaws until more Commissioners have been appointed.

Commissioner Wilson agreed with suspending the bylaws at this time and maintaining the current leadership. She recommended making it clear that it is only temporary and that the Commission will reconvene at a later time.

Executive Director Castellanos agreed it would not be a good practice to continue indefinitely, and recommended putting in place a trigger in time or membership.

Commissioner Navarro agreed it is wise to postpone the elections at this point until additional Commissioners have been appointed.

Commissioner Navarro suggested changing "may be" to "will be" in the second paragraph, as "may be" sounds conditional.

Executive Director Castellanos stated there are variable needs for individuals requiring an assistant. Staff used the language "may be" not to limit but to make provision for additional unforeseen costs that would be required in order for a Commissioner to provide service to the Commission. It is the "reasonable accommodation" portion of the policy. He used Caltrans as an example, stating they add any fair and reasonable costs on top of the additional $100.

Commissioner Wilson agreed with the variability of needs, but recommended that the language be as tight as it can be yet, at the same time, as flexible as it can be, due to the unpredictability of the needs of the individual and the conditions of travel. She suggested the language "may include but not limited to" in order to avoid possible problems in the future.

Executive Director Castellanos stated the policy will be brought back before the Executive Committee to finalize the language, but suggested the Commission adopt the basic policy today, including that amendment.

Chair Burks recommended putting the individual before the disability in the language as it is uniformly agreed upon in statute: "Commissioners with a disability" instead of "disabled Commissioners" and "attendant care for employees with disabilities" instead of "attendant care for disabled employees."

> **MOTION**: Commissioner Navarro moved to adopt the California Commission on Disability Access Travel Reimbursement Policy as amended. Commissioner Wilson seconded. Motion carried unanimously.

Action Items

- The policy is to be brought before the Executive Committee to finalize the language.

e. Public Records Act - Discussion

Chair Burks stated, due to the Commission's mandated collection and storage of demand letters and claims, Commissioners should be aware of the Public Records Act and Public Records Act requests the Commission has begun to receive.

Executive Director Castellanos encouraged Commissioners to review the summary of the Public Records Act and guidelines he provided to Commissioners and to contact him if they have questions. He also provided a draft of a policy for the Commission to guide staff in assuring the compliance of the Public Records Act requests. He thanked the California Building Standards Commission (CBSC) for their assistance in drafting this policy. He stated this is a first read and asked Commissioners to familiarize themselves with the Public Records Act itself and the proposed policy.

Minutes. Commissioner Wilson seconded. Motion carried unanimously with one abstention.

b. CCDA Introduction of New Commissioner and Oath of Office for Reconfirmed Commissioners

Governor Brown reappointed Chair Burks and Commissioner Wilson to this Commission. Commissioner Seferian swore them in.

Chair Burks welcomed Senator Jean Fuller to the Commission and asked her to introduce herself.

Commissioner Fuller stated she was Superintendent of Schools for 17 years, served four years in the Assembly, and is in her first term in the Senate. She represents District 18, geographically the largest in California, serving Kern, Tulare, Inyo, and San Bernardino Counties. She added she is happy to be a part of the Commission and eager to learn the process involved.

c. Status of Commissioner Appointments – Update

The original statute stipulates that the CCDA is to consist of eleven appointed voting members. Currently, there are two Commissioners appointed by the governor, Chair Burks and Commissioner Wilson; one appointed by the Senate, Vice Chair Hauge; and one by the Assembly, Commissioner Navarro. Five appointments are pending from Governor Brown, and the Senate and Assembly are in the process of filling one appointment each. Chair Burks stated there is a lot of work to be done through this Commission, and he is optimistic that much can be accomplished. He encouraged members of the public to submit their applications for appointment to help this Commission reach its full capacity.

Action Items

- No action items

d. Statewide Travel Reimbursement Policy - Update

Executive Director Castellanos stated the development of a policy for the Commission regarding reimbursement of personal assistants has been on the agenda for quite some time, as there has not been a consistent policy to use as a model within the state government. Caltrans has a policy that staff considered, but it does not address the needs outlined in discussions with Commissioners.

Executive Director Castellanos stated the independent living centers and their commission do have a policy that may serve as guidance to this Commission; he exhibited a potential CCDA travel reimbursement policy based on that model, which covers the assistant for all travel-related expenses as the Commissioner would be covered, plus $100 for additional expenses related to the attendant.

Chair Burks asked Commissioners Navarro and Wilson, who worked with staff on this issue, if they had any additional discussion.

CALIFORNIA COMMISSION ON DISABILITY ACCESS
FULL COMMISSION
MEETING MINUTES

April 4, 2013

1. CALL TO ORDER

Chairman Rocky Burks called the meeting to order at 10:15 a.m. at the Department of Consumer Affairs, First Floor Hearing Room, 1625 North Market Blvd., Sacramento, California 95834.

Chair Burks summarized the agenda and reviewed the meeting protocols.

ROLL CALL

Commissioners Present:	Rocky Burks, Chair Jean Fuller Lillibeth Navarro Anthony Seferian Betty Wilson
Commissioners Absent:	Tom Ammiano Connie Conway Ellen Corbett Scott Hauge, Vice Chair Chester "Chet" Widom
Staff Present:	Stephan Castellanos, Executive Director Angela Jemmott, Program Analyst

Staff Member Jemmott called the roll and confirmed the presence of a quorum.

PLEDGE OF ALLEGIANCE

Chair Burks led the Commission in the Pledge of Allegiance.

2. COMMENTS FROM THE PUBLIC ON ISSUES NOT ON THIS AGENDA

There was no public comment.

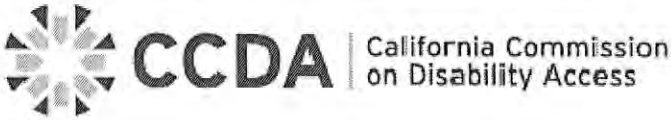
3. GENERAL BUSINESS ITEMS

a. Review/Approval of Meeting Minutes - (January 9, 2013) - Action

MOTION: Commissioner Navarro moved to approve the January 9, 2013, California Commission on Disability Access Full Commission Meeting

3) General Business Items:

c) Status of Commissioner Appointments - Update



Commission Members

Name	Represents	Original Appointment	Current Appointment	Appointed By
Rocky Burks	Public/Disability	05/26/2009	07/01/2010 - 01/01/2016	Governor
Vacant	Public/General Business			Governor
Vacant	Public/General Business			Governor
Vacant	Public/General Business			Governor
Vacant	Public/Disability			Governor
Betty Wilson	Public/Disability	05/26/2009	07/01/2010 - 01/01/2016	Governor
Vacant	Public/Disability			Governor
Guy A. Leemhuis	Public/Disability	05/8/2013	05/08/2013-01-01/2015	Senate
Scott Hauge	Public/General Business	07/02/2012	07/02/2012 - 01/01/2014	Senate
Lillibeth Navarro	Public/Disability	10/16/2009	01/27/2011 - 01/01/2014	Assembly
Vacant	Public/General Business			Assembly
Tom Ammiano	Assembly/Ex-Officio	07/15/2009	N/A	
Connie Conway	Assembly/Ex-Officio	07/15/2009	N/A	
Ellen Corbett	Senate/Ex-Officio	05/26/2009	N/A	
Jean Fuller	Senate/Ex-Officio	02/07/2013	N/A	
Anthony Seferian	Attorney General's Office/Ex-Officio	05/26/2009	N/A	
Chester Widom	Division of State Architect/Ex-Officio*	12/06/2009	N/A	

**Incumbent position is always the current state architect.*

CCDA Members and Committees

The California Commission on Disability Access (CCDA) is a 17-member independent commission consisting of 11 public members and six (6) ex officio nonvoting members. The CCDA was established through legislation (Senate Bill 1608 - Chapter 549, Statutes of 2008) enacted during the 2007/2008 legislative session.

Appointees to the CCDA were selected as specified by the provisions of Government Code section 8299.01 and the CCDA is comprised of appointees as follows:

3) General Business Items:

d) Disabled Access Legislative and Regulatory Developments

Capitol Track Report

A.B. No. 223 AUTHOR(S) : Olsen (Coauthors: Achadjian, Bigelow, Harkey, Nestande, and Wagner).

TOPIC : Civil actions: disabled access

HOUSE LOCATION : ASM TYPE OF BILL : Active Non-Urgency Non-Appropriations Majority Vote Required Non-State-Mandated Local Program Non-Fiscal Non-Tax Levy LAST HIST. ACT. DATE: 04/16/2013 LAST HIST.

BILL HISTORY 2013 Apr. 16 In committee: Set, first hearing. Hearing canceled at the request of author. Apr. 2 In committee: Hearing postponed by committee. Feb. 15 Referred to Coms. on JUD. and L. GOV. Feb. 5 From printer. May be heard in committee March 7. Feb. 4 Read first time. To print.

Current Status

5/10/13 Failed Deadline pursuant to Rule 61(a)(3). (Last location was JUD. on 2/15/2013)
Current Location: 5/10/13 A-2 YEAR

S.B. No. 550 AUTHOR(S) : Jackson.

TOPIC : Accessible Housing

HOUSE LOCATION : SEN +LAST AMENDED DATE : 05/08/2013

BILL HISTORY 05/23/2013 LAST HIST. ACTION : Held in committee and under submission. COMM. LOCATION : SEN APPROPRIATIONS TITLE : An act to add Sections 18941.10 and 50466 to the Health and Safety Code, relating to housing.

Current Status:

5/24/13 Failed Deadline pursuant to Rule 61(a)(5). (Last location was APPR. SUSPENSE FILE on 5/23/2013)
Current Location: 5/24/13 S-2 YEAR

3) General Business Items:

f) Executive Director Report

CCDA | California Commission on Disability Access

Executive Director Report

Communications/Outreach

Public Assistance: July 1 marked an effective date for a number of provisions contained in Senate Bill 1186. CCDA continues to receive calls, quite a few of late that relate to a landlords duty to disclose, when entering into a lease, if the site has been inspected by a CASp. As a result, we have begun to collect questions and responses for future inclusion in a FAQ area of the CCDA website. As stated in the past, CCDA staff is exploring how best to field these calls, and if some type of "customer call support" may be needed.

State Architect/DOR/CCDA Collaboration: We are pleased that CCDA has been included in the newly released DOR 2013-18 Strategic Plan, under Goal 2, Equal Access. The goal addresses educational resources to improve access to businesses and the integration of individuals with disabilities in their communities. CCDA will be working "in conjunction with DOR to develop and disseminate educational materials and information to public and private entities to promote and facilitate disability access". Discussions are continuing with DSA on similar issues.

Department of General Services: We continue to work with DGS IT to establish a connection to their Fiber cable, which currently does extend to the DOR building, which would allow CCDA to eliminate the current inadequate DSL connection. This project is proceeding and hopefully will be completed soon. Again, DOR has been very supportive of this effort, allowing CCDA to utilize their existing cable, and equipment spaces.

ICC: CCDA staff recently met with Dave Wall of the International Code Council regarding training. It is hoped that future discussions will lead to increased development of tools for designers and building enforcement professionals.

Legislation

SB 1186

Receipt of claims continue. CCDA is tabulating the claims as they come in in preparation for developing the report required to the legislature by July 31. CCDA has acquired two volunteers to assist (DOR clients) and is receiving support from DOJ interns.

Website

CCDA has retained the firm Teranomics to update and reorganize the CCDA website. The release of the new site will coincide with the posting of the demand letter/claim data. This redesign is an interim step in our technology updates. The

update will move CCDA to the 2010 state template for webpages. A future update is in discussion that will allow even more functionality.

Strategic Planning

CCDA has retained the CSU Sacramento Center for Collaborative Policy to assist the commission in the development of its strategic plan. This effort kicks off today, and will be discussed at the July 24 meeting of the entire Commission.

Staffing

Workload has increased as a result of the increase in claims coming into CCDA and the need to collect appropriate data for posting on the CCDA webpage. We anticipate that there will be an additional increase in workload as CCDA staff addresses educational programs that result from the top 10 violations that will be included in the data posting, as well as projects that result from the Strategic Planning process. We are focused on meeting our statutorily required duties as well as identifying appropriate content for the website.

Additional staffing is being considered utilizing either retired annuitants, intermittent seasonal, or students.

4) Strategic Planning Project

CCDA | California Commission on Disability Access

Proposed Strategic Planning Approach

Presented by:
California State University, Sacramento
Center for Collaborative Policy

Center Mission

The mission of the Center is to build the capacity of public agencies, stakeholder groups, and the public to use collaborative strategies to improve policy outcomes.

Strategic Goals

- Enhance governance capacity;
- Enhance civic engagement capacity;
- Create knowledge capacity;
- Enhance statewide capacity; and
- Continue to enhance internal capacity.

Services

- Collaborative Policy and Conflict Resolution
- Strategic Planning
- Collaborative Public Involvement
- Organizational Development
- Training
- Research

Overall Proposed Framework

■ Project Design

- Create design that leverages data in the *Report to the California State Legislature in Compliance with Senate Bill 1186, April 15 2013* (which includes enabling legislation SB1608)
- Consider involving external stakeholders in the process
- Clarify desired outcomes
- Consultant/facilitator to have "soft hand" as neutral for process consistency

Strategic Planning Process

Phase 1:

Design Strategic Plan Approach

- Clarify desired outcomes with Leadership Team
- Create and convene Design Team
- Interview key stakeholders/assess
- Design strategic planning process

Phase 2:

Implement Strategic Planning Process

- Review assessment findings with Commissioners
- Hold CCDA strategic planning event
- Draft Strategic Plan
- Stakeholder validation workshops
- Final draft created for Commission approval

Strategic Planning Process

- Vision
- Mission
- Goals
- Objectives
- Action Plan

Draft Design and Implementation Approach

Step 1

- Create and convene Design Team
- Stakeholder / issue assessment
- Focus Groups / statewide users input
- Prepare all data to support upcoming workshops
- Review Summary Findings with Commission

Step 2

- Design and hold strategic planning session with CCDA staff, partners, Commission representative and external stakeholders
- Create "initial draft" working document for public feedback/input

Step 3

- User/client validation workshops for feedback, input and education for key groups
- Ideally two: one north; one south
- Web input available

... continued

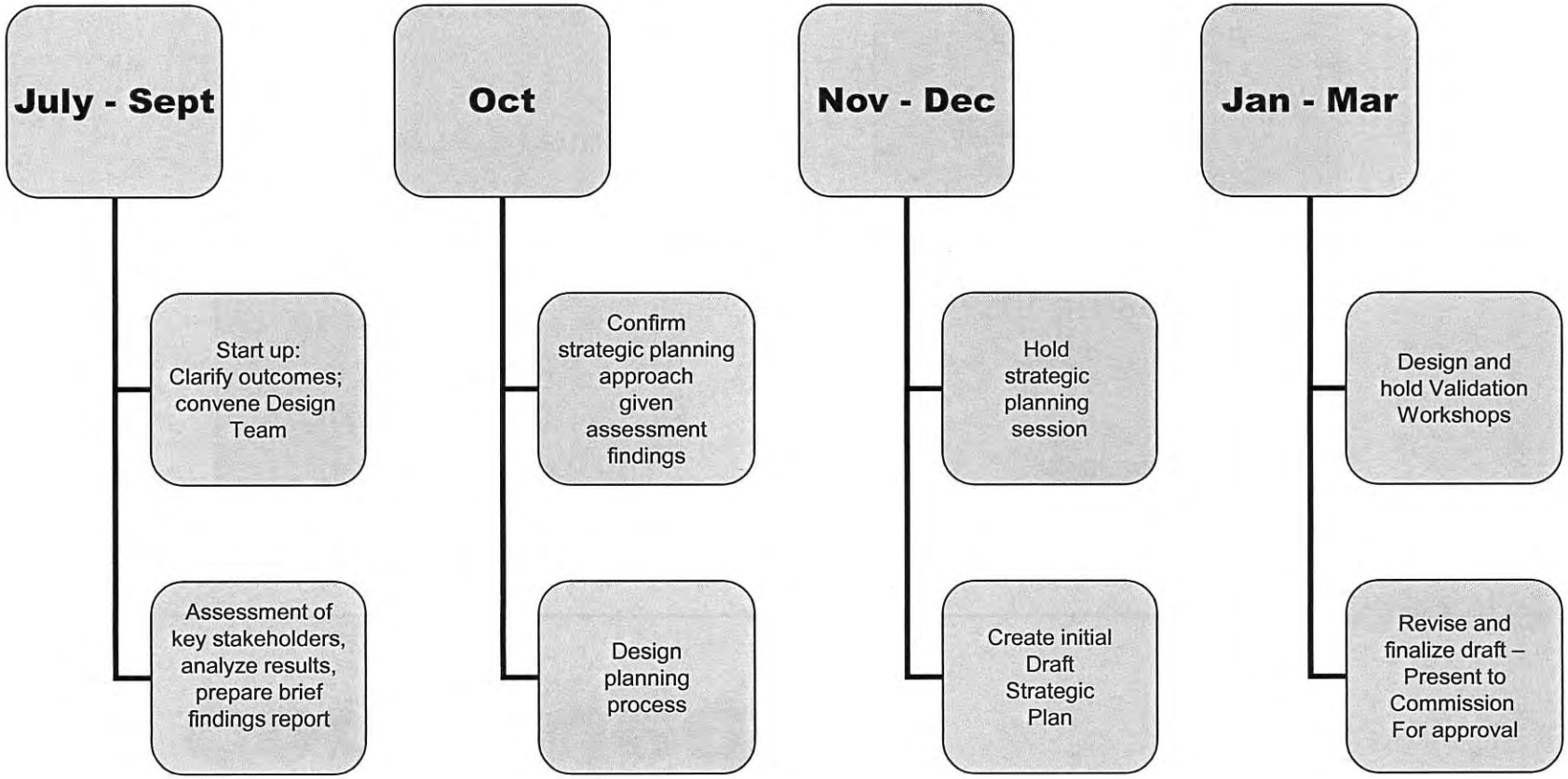
- Create draft #2 of Strategic Plan based on input from user workshops
- Design Team to review and refine draft
- Refine Action Plan
- Create Governance Structure

Step 4

Step 5

- Produce Final Draft Strategic Plan
- Seek Commission approval
- Create public version for distribution
- Post Strategic Plan to website

Draft Timeline



Assumptions for Discussion

Timeline

- First draft of Strategic Plan by end of year
- Progress Report included in January 31, 2013 Report to Legislature

Overarching Goals

- Elevate CCDA visibility
- Create buy-in from stakeholder groups
- Prepare robust, thoughtful strategic planning document
- Creation of Governance Structure

Resources

- CCDA to provide logistics and support as able
- Team: Adam Sutkus, Jodie Monaghan, Grace Person

5) Reconstruction of Committees

Discussion From 5/9 Executive Committee Meeting Minutes

Appointments and New Structure for Executive and Outreach Committees – Discussion

Executive Director Castellanos stated the new Committee structure will consist of an Executive Committee, which would also take the role of a legislative committee to provide recommendations to the full Commission on legislation and policy, and an Outreach Committee, which would be the education, resources, and outreach group. The Outreach Committee addresses the Senate Bill (SB) 1186 mandate of developing tools and resources, and focusing on outreach to the business community, the disability community, and local government.

Executive Director Castellanos asked Commissioners to consider the makeup of these groups and who will participate in these Committees. He reminded Commissioners not to limit their consideration to Commissioners alone.

Chair Burks stated the Executive Committee will remain as it is for now. He asked Commissioners Hauge, Navarro, and Wilson if they would consider being part of the Outreach Committee. Commissioner Wilson agreed to be on the Outreach Committee.

Commissioner Hauge stated he was comfortable with the structure and asked about the timeline for filling the Committees.

Chair Burks stated the Commission can appoint community members to Committees or potential subcommittees, according to the CCDA Bylaws. He asked Commissioners to e-mail him and Executive Director Castellanos with names of individuals who may serve on a Committee or subcommittee.

Executive Director Castellanos gave the example of creating a functional website to serve the needs of the disability and small business communities as a project the Outreach Committee will be working on. He has a proposal to the Department of Rehabilitation (DOR) and the Division of the State Architect (DSA) to create an independent web portal for this purpose.

He proposed that the three agencies share duties and responsibilities to manage and provide content to this portal. He will send a draft copy of that proposal to members of the Outreach Committee for their consideration. In addition, he hoped to send some design work, content formation, and existing content and will ask the Outreach Committee to define how to best organize it to make this portal as effective as possible.

Commissioner Wilson suggested the Outreach Committee discuss the notion of statewide outreach, ensuring meetings are held in different parts of the state once or twice a year. She also suggested hosting webinars, where people can participate, be involved, and encourage others to support the CCDA mission.

Executive Director Castellanos agreed and stated others have proposed that the Commission consider statewide conferences and/or workshops, along with face-to-face activities.

Commissioner Navarro stated she assumed that representatives from both the disability and business communities would be a part of the Outreach Committee. Members of the disability community are focused on the laws that guarantee civil rights, but not many know much about the business community. She emphasized the need to debunk the myths and engender understanding for each community in order to facilitate goodwill between the two communities.

Commissioner Hauge stated he believed the small business community wants to make their facilities available for the disabled, but there is the fear and the lawsuit factors that they need to move past.

Commissioner Wilson offered her assistance in involving many of the large businesses and felt they would be happy to collaborate with the Commission. She cautioned against doing too many projects when there are not enough Commissioners yet, and restated the need for securing assistance from interns.

Chair Burks agreed and stated the executive director has identified a manageable approach to narrow the scope of intervention. It does not mean the Commission cannot begin reaching out to larger businesses, as Commissioner Wilson suggested, or interacting with the smaller businesses to move beyond that fear factor that hinders persons with disabilities from actively participating in the business environment, as Commissioner Hauge suggested. He recommended that Commissioners send their thoughts and ideas to Executive Director Castellanos and him, and also submit names for possible membership for the Outreach Committee or subcommittee. He and staff will follow up with them.

Action Items

- Commissioners are to e-mail Chair Burks and staff with names of individuals who may serve on the Outreach Committee or subcommittee.
- Chair Burks and staff are to follow up with the individuals suggested by Commissioners to serve on Committees or subcommittees.
- Staff is to send a draft copy of the proposal to DOR and DSA to members of the Outreach Committee for their consideration.

Staff is to send design work, content formation, and existing content of the web portal to members of the Outreach Committee.

Discussion From 4/4 Full Commission Meeting Minutes

CCDA COMMITTEE RESTRUCTURING - DISCUSSION

Chair Burks stated, under the SB 1608 structure, the Commission had five Standing Committees: the Executive, Civil Enforcement, Checklist, Accessibility Enhancement, and CASp and Education Committees. The CCDA Bylaws allow the Commission to change the Committee structure and, with the passage of SB 1186, it is the recommendation of the chair to reduce the Committees to two

Standing Committees: a joint Executive Legislative Committee to carry out the functions of the Commission in the absence of the full Commission, and an Outreach and Education Committee.

Executive Director Castellanos added this restructuring to two Standing Committees does not prevent the Commission from establishing working groups or task force for any necessary items or projects.

Commissioners Navarro and Wilson agreed with the chair's recommendation.

Chair Burks stated he will be contacting Commissioners and looks forward to their involvement with this restructure.

Action Items

Chair Burks is to contact Commissioners to appoint them to the Standing Committees.

CCDA | California Commission on Disability Access

Policy Memorandum

Policy Memorandum No. 2012-01

Date: **January 30, 2012**

To: **CCDA Committee Chairpersons**

Subject: **Selection of Public Committee Members Protocols**

The following protocols shall be adhered to with regards to the selection and participation of public members in select activities of individual CCDA committees:

1. The number of public members selected shall not exceed four (4) for each committee or individual sub-committee, unless cause is shown to the chair of the CCDA for additional members.

2. Public participants shall be equally represented by members with disabilities and members from the business community.

3. Consideration of public members for committees shall be subject to submission of a letter of request for appointment, together with a statement of qualifications and experience reflective of the committee's specific area of responsibility to the executive director for review and approval by the chair of the CCDA pursuant to CCDA Bylaws 6.3.

4. Failure of a public member appointee to attend two concurrent meetings will be grounds for dismissal.

The goal of the CCDA is to select public members who shall participate in and contribute to the activities of the CCDA commission committees and subcommittees to insure the timely delivery of committee deliverables.

This policy provides for the following:

Selection Procedures

- Submission of letter of interest.
- Submission of resume and or statement of qualifications and experience.

Selection Criteria

- Members of the public with disabilities two (2) or equal in number to those from the business community.
- Members of the business community two (2) or equal in number to those from the public with disabilities.

Selection Determination

- Approval of the afore identified committee/subcommittee members will be by the concurrence of the Chair of the Commission. CCDA Bylaws 6.3

Excerpt of CCDA By-Laws 5-6.6

5. EXECUTIVE COMMITTEE

5.1 The Executive Committee is a standing committee and shall be comprised of the elected officers of the CCDA and the chairs of the standing committees.

5.2 The Executive Committee shall make recommendations to the CCDA and shall implement policies set by the CCDA.

5.3 The Executive Committee shall meet at least every month or more often as determined by the Chair at a time and place designated by the Chair.

6. STANDING, AD HOC AND SUB-COMMITTEES

6.1. The CCDA Chair may create standing or Ad Hoc committees as are deemed necessary from time to time to carry out the Commission's mandate.

6.2. Standing or Ad Hoc committees shall meet upon the call of the committee chair at a time and place designated by the chair.

6.3. The chair and membership of each standing or Ad Hoc committee shall be appointed by the CCDA chair. The chair of any standing or Ad Hoc committee shall be a member of the CCDA. Additional standing or Ad Hoc committee(s) members may be appointed by the chairperson of the applicable committee(s) subject to the concurrence of the CCDA chair. Non-voting, ex-officio members of the CCDA, or their representative, may vote as a member of any standing, Ad Hoc or subcommittee.

6.4. Subcommittees of a standing or Ad Hoc committee shall be appointed by the chairperson(s) of the applicable committee(s). The CCDA Officers and Executive Director shall be informed of any subcommittee being created as well as the appointees. No appointee shall serve on any sub-committee without the concurrence of the CCDA chair.

6.5. Standing Committees are considered a permanent part of the organization. A standing committee functions to perform duties that which are essential to the harmonious operation of the CCDA. Members of a standing committee may change when new officers are elected or appointed, but the purpose of the committee and its functions and duties do not change. When the CCDA receives business that is connected with the work of a standing committee, it may refer that business to the committee.

Ad Hoc Committees are created to perform a specific task and is dissolved when the task is completed and the final report is given. Ad Hoc committees are not created to do a task that is within the designated function of a standing committee. Ad Hoc committees have two functions; one is to investigate and the other is to carry out what the Commission has adopted. For example, if the CCDA moves to set up a law student program to help carry out CCDA's mission, the chair could create an Ad Hoc committee to define the actual service they would provide the commission.

Subcommittees are created to perform a specific task for a standing or Ad Hoc committee and are dissolved when the task is completed.

6.6. Standing or Ad Hoc committees shall make recommendations to the CCDA.

6) Bagley Keene Training

A Handy Guide to The Bagley-Keene Open Meeting Act 2004

California Attorney General's Office

INTRODUCTION

The Bagley-Keene Open Meeting Act ("the Act" or "the Bagley-Keene Act"), set forth in Government Code sections 11120-11132[1], covers all state boards and commissions. Generally, it requires these bodies to publicly notice their meetings, prepare agendas, accept public testimony and conduct their meetings in public unless specifically authorized by the Act to meet in closed session. Following is a brief summary of the Act's major provisions. Although we believe that this summary is a helpful road map, it is no substitute for consulting the actual language of the Act and the court cases and administrative opinions that interpret it.

If you wish to obtain additional copies of this pamphlet, they may be ordered or downloaded via the Attorney General's Home Page, located on the World Wide Web at http://caag.state.ca.us. You may also write to the Attorney General's Office, Public Inquiry Unit, P.O. Box 944255, Sacramento, CA 94244-2550 or call us at (800) 952-5225 (for callers within California), or (916) 322-3360 (for callers outside of California); the TTY/TDD telephone numbers are (800) 952-5548 (for callers within California), or (916) 324-5564 (for callers outside of California).

PURPOSE OF THE ACT

Operating under the requirements of the Act can sometimes be frustrating for both board members and staff. This results from the lack of efficiency built into the Act and the unnatural communication patterns brought about by compliance with its rules.

If efficiency were the top priority, the Legislature would create a department and then permit the department head to make decisions. However, when the Legislature creates a multimember board, it makes a different value judgment. Rather than striving strictly for efficiency, it concludes that there is a higher value to having a group of individuals with a variety of experiences, backgrounds and viewpoints come together to develop a consensus. Consensus is developed through debate, deliberation and give and take. This process can sometimes take a long time and is very different in character than the individual-decision-maker model.

Although some individual decision-makers follow a consensus-building model in the way that they make decisions, they're not required to do so. When the Legislature creates a multimember body, it is mandating that the government go through this consensus building process.

When the Legislature enacted the Bagley-Keene Act, it imposed still another value judgment on the governmental process. In effect, the Legislature said that when a body sits down to develop its consensus, there needs to be a seat at the table reserved for the public. (§ 11120.) By reserving this place for the public, the Legislature has provided the public with the ability to monitor and participate in the decision-making process. If the body were permitted to meet in secret, the public's role in the decision-making process would be negated. Therefore, absent a specific reason to keep

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[1]All statutory references are to the Government Code.

the public out of the meeting, the public should be allowed to monitor and participate in the decision-making process.

If one accepts the philosophy behind the creation of a multimember body and the reservation of a seat at the table for the public, many of the particular rules that exist in the Bagley-Keene Act become much easier to accept and understand. Simply put, some efficiency is sacrificed for the benefits of greater public participation in government.

BODIES COVERED BY THE ACT: General Rule

The general rule for determining whether a body is covered by the Act involves a two part test (§ 11121(a)):

First, the Act covers multimember bodies. A multimember body is two or more people. Examples of multimember bodies are: state boards, commissions, committees, panels, and councils. Second, the body must be created by statute or required by law to conduct official meetings. If a body is created by statute, it is covered by the Act regardless of whether it is decision-making or advisory.

- **Advisory Bodies**

The Act governs two types of advisory bodies: (1) those advisory bodies created by the Legislature and (2) those advisory bodies having three or more members that are created by formal action of another body. (§11121(c).) If an advisory body created by formal action of another body has only two members, it is not covered by the Bagley-Keene Act. Accordingly, that body can do its business without worrying about the notice and open meeting requirements of the Act. However, if it consists of three people, then it would qualify as an advisory committee subject to the requirements of the Act.

When a body authorizes or directs an individual to create a new body, that body is deemed to have been created by formal action of the parent body even if the individual makes all decisions regarding composition of the committee. The same result would apply where the individual states an intention to create an advisory body but seeks approval or ratification of that decision by the body.

Finally, the body will probably be deemed to have acted by formal action whenever the chair of the body, acting in his or her official capacity, creates an advisory committee. Ultimately, unless the advisory committee is created by staff or an individual board member, independent of the body's authorization or desires, it probably should be viewed as having been created by formal action of the body.

- **Delegated Body**

The critical issue for this type of body is whether the committee exercises some power that has been delegated to it by another body. If the body has been delegated the power to act, it is a delegated committee. (§ 11121(b).) A classic example is the executive committee that is given authority to act on behalf of the entire body between meetings. Such executive committees are delegated committees and are covered by the requirements of the Act.

There is no specific size requirement for the delegated body. However, to be a body, it still must be comprised of multiple members. Thus, a single individual is not a delegated body.

- **Commissions Created by the Governor**

The Act specifically covers commissions created by executive order. (§ 11121(a).) That leaves open two potential issues for resolution with respect to this type of body. First, what's an executive order as opposed to other exercises of power by the Governor? Second, when is a body a "commission" within the meaning of this provision? There is neither case law nor an Attorney General opinion addressing either of these issues in this context.

- **Body Determined by Membership**

The next kind of body is determined by who serves on it. Under this provision, a body becomes a state body when a member of a state body, in his or her official capacity, serves as a representative on another body, either public or private, which is funded in whole or in part by the representative's state body. (§ 11121(d).) It does not come up often, but the Act should be consulted whenever a member of one body sits as a representative on another body.

In summary, the foregoing are the general types of bodies that are defined as state bodies under the Bagley-Keene Act. As will be discussed below, these bodies are subject to the notice and open meeting requirements of the Act.

MEMBERS-TO-BE

The open meeting provisions of the Act basically apply to new members at the time of their election or appointment, even if they have not yet started to serve. (§ 11121.95.) The purpose of this provision is to prevent newly appointed members from meeting secretly among themselves or with holdover members of a body in sufficient numbers so as to constitute a quorum. The Act also requires bodies to provide their new members with a copy of the Act. (§ 11121.9.) We recommend that this Handy Guide be used to satisfy that requirement.

WHAT IS A MEETING?

The issue of what constitutes a meeting is one of the more troublesome and controversial issues under the Act. A meeting occurs when a quorum of a body convenes, either serially or all together, in one place, to address issues under the body's jurisdiction. (§ 11122.5.) Obviously, a meeting would include a gathering where members were debating issues or voting on them. But a meeting also includes situations in which the body is merely receiving information. To the extent that a body receives information under circumstances where the public is deprived of the opportunity to monitor the information provided, and either agree with it or challenge it, the open-meeting process is deficient.

Typically, issues concerning the definition of a meeting arise in the context of informal gatherings such as study sessions or pre-meeting get-togethers. The study session historically arises from the body's desire to study a subject prior to its placement on the body's agenda. However, if a quorum is involved, the study session should be treated as a meeting under the Act. With respect to pre-meeting briefings, this office opined that staff briefings of the city council a half hour before the noticed city council meeting to discuss the items that would appear on the council's meeting agenda were themselves meetings subject to open meeting laws.[2] To the extent that a briefing is desirable, this office recommends that the executive officer prepare a briefing paper which would then be available to the members of the body, as well as, to the public.

- **Serial Meetings**

The Act expressly prohibits the use of direct communication, personal intermediaries, or technological devices that are employed by a majority of the members of the state body to develop a collective concurrence as to action to be taken on an item by the members of the state body outside of an open meeting. (§ 11122.5(b).) Typically, a serial meeting is a series of communications, each of which involves less than a quorum of the legislative body, but which taken as a whole involves a majority of the body's members. For example, a chain of communications involving contact from member A to member B who then communicates with member C would constitute a serial meeting in the case of a five-person body. Similarly, when a person acts as the hub of a wheel (member A) and communicates individually with the various spokes (members B and C), a serial meeting has occurred. In addition, a serial meeting occurs when intermediaries for board members have a meeting to discuss issues. For example, when a representative of member A meets with representatives of members B and C to discuss an agenda item, the members have conducted a serial meeting through their representatives acting as intermediaries.

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[2]42 Ops.Cal.Atty.Gen. 61 (1963); see also 32 Ops.Cal.Atty.Gen. 240 (1958).

In the *Stockton Newspapers* case, the court concluded that a series of individual telephone calls between the agency attorney and the members of the body constituted a meeting.[3] In that case, the attorney individually polled the members of the body for their approval on a real estate transaction. The court concluded that even though the meeting was conducted in a serial fashion, it nevertheless was a meeting for the purposes of the Act.

An executive officer may receive spontaneous input from board members on the agenda or on any other topic. But problems arise if there are systematic communications through which a quorum of the body acquires information or engages in debate, discussion, lobbying, or any other aspect of the deliberative process, either among themselves or between board members and the staff.

Although there are no cases directly on point, if an executive officer receives the same question on substantive matters addressed in an upcoming agenda from a quorum of the body, this office recommends that a memorandum addressing these issues be provided to the body and the public so they will receive the same information.

This office has opined that under the Brown Act (the counterpart to the Bagley-Keene Act which is applicable to local government bodies) that a majority of the board members of a local public agency may not e-mail each other to discuss current topics related to the body's jurisdiction even if the e-mails are also sent to the secretary and chairperson of the agency, posted on the agency's Internet website, and made available in printed form at the next public meeting of the board.[4]

The prohibition applies only to communications employed by a quorum to develop a collective concurrence concerning action to be taken by the body. Conversations that advance or clarify a member's understanding of an issue, or facilitate an agreement or compromise among members, or advance the ultimate resolution of an issue, are all examples of communications that contribute to the development of a concurrence as to action to be taken by the body. Accordingly, with respect to items that have been placed on an agenda or that are likely to be placed upon an agenda, members of state bodies should avoid serial communications of a substantive nature that involve a quorum of the body.

In conclusion, serial meeting issues will arise most commonly in connection with rotating staff briefings, telephone calls or e-mail communications among a quorum of board members. In these situations, part of the deliberative process by which information is received and processed, mulled over and discussed, is occurring without participation of the public.

Just remember, serial-meeting provisions basically mean that what the body can not do as a group it can not do through serial communications by a quorum of its members.

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[3] *Stockton Newspapers, Inc.* v. *Redevelopment Agency* (1985) 171 Cal.App.3d 95, 105. See also, 65 Ops.Cal.Atty.Gen. 63, 66 (1982); 63 Ops.Cal.Atty.Gen. 820, 828-829 (1980).

[4] Cal.Atty.Gen., Indexed Letter, No. IL 00-906 (February 20, 2001).

■ Contacts by the Public

One of the more difficult areas has to do with the rights of the public to contact individual members. For example, a communication from a member of the public to discuss an issue does not violate the Act. (§ 11122.5(c)(1).) The difficulty arises when the individual contacts a quorum of the body.

So long as the body does not solicit or orchestrate such contacts, they would not constitute a violation of the Bagley-Keene Act. Whether its good policy for a body to allow these individual contacts to occur is a different issue.

■ Social Gatherings

The Act exempts purely social situations from its coverage. (§ 11122.5(c)(5).) However, this construction is based on the premise that matters under the body's jurisdiction will not be discussed or considered at the social occasion. It may be useful to remind board members to avoid "shop talk" at the social event. Typically, this is difficult because service on the body is their common bond.

■ Conferences and Retreats

Conferences are exempt from the Act's coverage so long as they are open to the public and involve subject matter of general interest to persons or bodies in a given field. (§ 11122.5(c)(2).) While in attendance at a conference, members of a body should avoid private discussions with other members of their body about subjects that may be on an upcoming agenda. However, if the retreat or conference is designed to focus on the laws or issues of a particular body it would no be exempt under the Act.

■ Teleconference Meetings

The Act provides for audio or audio and visual teleconference meetings for the benefit of the public and the body. (§ 11123.) When a teleconference meeting is held, each site from which a member of the body participates must be accessible to the public. [Hence, a member cannot participate from his or her car, using a car phone or from his or her home, unless the home is open to the public for the duration of the meeting.] All proceedings must be audible and votes must be taken by rollcall. All other provisions of the Act also apply to teleconference meetings. For these reasons, we recommend that a properly equipped and accessible public building be utilized for teleconference meetings. This section does not prevent the body from providing additional locations from which the public may observe the proceedings or address the state body by electronic means.

NOTICE AND AGENDA REQUIREMENTS

The notice and agenda provisions require bodies to send the notice of its meetings to persons who have requested it. (§ 11125(a).) In addition, at least ten days prior to the meeting, bodies must

prepare an agenda of all items to be discussed or acted upon at the meeting. (§ 11125(b).) In practice, this usually translates to boards and commissions sending out the notice and agenda to all persons on their mailing lists. The notice needs to state the time and the place of the meeting and give the name, phone number and address of a contact person who can answer questions about the meeting and the agenda. (§ 11125(a).) The agenda needs to contain a brief description of each item to be transacted or discussed at the meeting, which as a general rule need not exceed 20 words in length. (§ 11125(b).)

The agenda items should be drafted to provide interested lay persons with enough information to allow them to decide whether to attend the meeting or to participate in that particular agenda item. Bodies should not label topics as "discussion" or "action" items unless they intend to be bound by such descriptions. Bodies should not schedule items for consideration at particular times, unless they assure that the items will not be considered prior to the appointed time.

The notice and agenda requirements apply to both open and closed meetings. There is a tendency to think that agendas need not be prepared for closed session items because the public cannot attend. But the public's ability to monitor closed sessions directly depends upon the agenda requirement which tells the public what is going to be discussed.

REGULAR MEETINGS

The Act, itself, does not directly define the term " regular meeting." Nevertheless, there are several references in the Act concerning regular meetings. By inference and interpretation, the regular meeting is a meeting of the body conducted under normal or ordinary circumstances. A regular meeting requires a 10-day notice. This simply means that at least 10 days prior to the meeting, notice of the meeting must be given along with an agenda that sufficiently describes the items of business to be transacted or discussed. (§§ 11125(a), 11125(b).) The notice for a meeting must also be posted on the Internet, and the web site address must be included on the written agenda. In addition, upon request by any person with a disability, the notice must be made available in appropriate alternative formats, as required by Section 202 of the Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12132), and the applicable federal rules and regulations. The notice must contain information regarding the manner in which and the deadline by which a request for any disability-related modification or accommodation, including auxiliary aids or services, may be made by a person requiring these aids or services in order to participate in the meeting.

In two special situations, items may be added to the agenda within the 10-day notice period, provided that they are added and notice is given no later than 48 hours prior to the meeting. (§ 11125.) The first such situation is where the body concludes that the topic it wishes to add would qualify for an emergency meeting as defined in the Act. (§ 11125.3(a)(1).) The second situation is where there is a need for immediate action and the need for action came to the attention of the body after the agenda was mailed in accordance with the 10-day notice requirement. (§ 11125.3(a)(2).) This second situation requires a two-thirds vote or a unanimous vote if two-thirds of the members are not present.

Changes made to the agenda under this section must be delivered to the members of the body and to national wires services at least 48 hours before the meeting and must be posted on the Internet as soon as practicable.

SPECIAL MEETINGS

A few years ago, special meetings were added to the Act to provide relief to agencies that, due to the occurrence of unforeseen events, had a need to meet on short notice and were hamstrung by the Act's 10-day notice requirement. (§ 11125.4.) The special meeting requires that notice be provided at least 48 hours before the meeting to the members of the body and all national wire services, along with posting on the Internet.

The purposes for which a body can call a special meeting are quite limited. Examples include pending litigation, legislation, licencing matters and certain personnel actions. At the commencement of the special meeting, the body is required to make a finding that the 10-day notice requirement would impose a substantial hardship on the body or that immediate action is required to protect the public interest and must provide a factual basis for the finding. The finding must be adopted by two-thirds vote and must contain articulable facts that support it. If all of these requirements are not followed, then the body can not convene the special meeting and the meeting must be adjourned.

EMERGENCY MEETINGS

The Act provides for emergency meetings in rare instances when there exists a crippling disaster or a work stoppage that would severely impair public health and safety. (§ 11125.5.) An emergency meeting requires a one-hour notice to the media and must be held in open session. The Act also sets forth a variety of other technical procedural requirements that must be satisfied.

PUBLIC PARTICIPATION

Since one of the purposes of the Act is to protect and serve the interests of the general public to monitor and participate in meetings of state bodies, bodies covered by the Act are prohibited from imposing any conditions on attendance at a meeting. (§ 11124.) For example, while the Act does not prohibit use of a sign-in sheet, notice must be clearly given that signing-in is voluntary and not a pre-requisite to either attending the meeting or speaking at the meeting. On the other hand, security measures that require identification in order to gain admittance to a government building are permitted so long as security personnel do not share the information with the body.

In addition, members of the public are entitled to record and to broadcast (audio and/or video) the meetings, unless to do so would constitute a persistent disruption. (§ 11124.1.)

To ensure public participation, the Legislature expressly afforded an opportunity to the public to speak or otherwise participate at meetings, either before or during the consideration of each agenda item. (§ 11125.7.) The Legislature also provided that at any meeting the body can elect to consider comments from the public on any matter under the body's jurisdiction. And while the body cannot act on any matter not included on the agenda, it can schedule issues raised by the public for consideration at future meetings. Public comment protected by the Act includes criticism of the programs, policies and officials of the state body.

ACCESS TO RECORDS

Under the Act, the public is entitled to have access to the records of the body. (§ 11125.1.) In general, a record includes any form of writing. When materials are provided to a majority of the body either before or during the meeting, they must also be made available to the public without delay, unless the confidentiality of such materials is otherwise protected. Any records provided to the public, must be available in appropriate alternative formats, as required by Section 202 of the Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12132), and the applicable federal rules and regulations, upon request by a person with a disability.

Notwithstanding the foregoing, the Act makes Government Code section 6254, the most comprehensive exemption under the California Public Records Act, applicable to records provided to the body. That is, if the record that is being provided to the board members is a record that is otherwise exempt from disclosure under section 6254 of the Government Code, then the record need not be disclosed to members of the public. (§ 11125.1(a).) However, the public interest balancing test, set forth in Government Code section 6255, is expressly made inapplicable to records provided to members of the body.

If an agency has received a request for records, the Public Records Act allows the agency to charge for their duplication. (§ 11125.1(c).) Please be aware that the Public Records Act limits the amount that can be charged to the direct cost of duplication. This has been interpreted to mean a pro-rata share of the equipment cost and probably a pro-rata share of the employee cost in order to make the copies. It does not include anything other than the mere reproduction of the records. (See,§ 6253.9 for special rules concerning computer records.) Accordingly, an agency may not recover for the costs of retrieving or redacting a record.

ACCESSABILITY OF MEETING LOCATIONS

The Act requires that the place and manner of the meeting be nondiscriminatory. (§ 11131.) As such, the body cannot discriminate on the basis of race, religion, national origin, etc. The meeting site must also be accessible to the disabled. Furthermore, the agency may not charge a fee for attendance at a meeting governed by the Act.

CLOSED SESSIONS

Although, as a general rule, all items placed on an agenda must be addressed in open session, the Legislature has allowed closed sessions in very limited circumstances, which will be discussed in detail below. Closed sessions may be held legally only if the body complies with certain procedural requirements. (§ 11126.3)

As part of the required general procedures, the closed session must be listed on the meeting agenda and properly noticed. (§ 11125(b).) Prior to convening into closed session, the body must publically announce those issues that will be considered in closed session. (§ 11126.3.) This can be done by a reference to the item as properly listed on the agenda. In addition, the agenda should cite the statutory authority or provision of the Act which authorizes the particular closed session. (§11125(b).) After the closed session has been completed, the body is required to reconvene in public. (§ 11126.3(f).) However, the body is required to make a report only where the body makes a decision to hire or fire an individual. (§ 11125.2.) Bodies under the Bagley-Keene Act are required to keep minutes of their closed sessions. (§ 11126.1.) Under the Act, these minutes are confidential, and are disclosable only to the board itself or to a reviewing court.

Courts have narrowly construed the Act's closed-session exceptions. For example, voting by secret ballot at an open-meeting is considered to be an improper closed session. Furthermore, closed sessions may be improperly convened if they are attended by persons other than those directly involved in the closed session as part of their official duties.

- **Personnel Exception**

The personnel exception generally applies only to employees. (§ 11126(a) and (b).) However, a body's appointment pursuant to subdivision (e) of Section 4 of Article VII of the California Constitution (usually the body's executive director) has been designated an employee for purposes of the personnel exception. On the other hand, under the Act, members of the body are not to be considered employees, and there exists no personnel exception or other closed session vehicle for board members to deal with issues that may arise between them. Board elections, team building exercises, and efforts to address personality problems that may arise between members of the board, cannot be handled in closed session.

Only certain categories of subject matter may be considered at a closed session authorized under the personnel exception. (§ 11126(a)(1).) The purpose of the personnel exception is to protect the privacy of the employee, and to allow the board members to speak candidly. It can be used to consider appointments, employment, evaluation of performance, discipline or dismissal, as well as to hear charges or complaints about an employee's actions. Although the personnel exception is appropriate for discussion of an employee's competence or qualifications for appointment or employment, we do not think that discussion of employee compensation may be conducted in closed

session in light of an appellate court decision interpreting a similar exception in the Brown Act, (the counterpart to the Bagley-Keene Act which is applicable to local government bodies).[5]

The Act requires compliance with specific procedures when the body addresses a complaint leveled against an employee by a third person or initiates a disciplinary action against an employee. Under either circumstance, the Act requires 24-hour written notice to the employee. (§ 11126(a)(2).) Failure to provide such notice voids any action taken in closed session.

Upon receiving notice, the employee has the right to insist that the matter be heard in public session. (§ 11126(a)(2).) However, the opposite is not true. Under the Act, an employee has no right to have the matter heard in closed session. If the body decides to hold an open session, the Bagley-Keene Act does not provide any other option for the employee. Considerations, such as the employee's right to privacy, are not addressed under the Bagley-Keene Act.

If an employee asserts his or her right to have the personnel matter addressed in open session, the body must present the issues and information/evidence concerning the employee's performance or conduct in the open session. However, the body is still entitled to conduct its deliberations in closed session. (§ 11126(a)(4).)

- **Pending Litigation Exception**

The purpose of the pending litigation exception is to permit the agency to confer with its attorney in circumstances where, if that conversation were to occur in open session, it would prejudice the position of the agency in the litigation. (§ 11126(e)(1).) The term "litigation" refers to an adjudicatory proceeding that is held in either a judicial or an administrative forum. (§11126(e)(2)(c)(iii).) For purposes of the Act, litigation is "pending" in three basic situations. (§11126(e)(2).) First, where the agency is a party to existing litigation. Secondly, where under existing facts and circumstances, the agency has substantial exposure to litigation. And thirdly, where the body is meeting for the purpose of determining whether to initiate litigation. All of these situations constitute pending litigation under the exception.

For purposes of the Bagley-Keene Act, the pending litigation exception constitutes the exclusive expression of the attorney-client privilege. (§ 11126(e)(2).) In general, this means that independent statutes and case law that deal with attorney-client privilege issues do not apply to interpretations of the pending litigation provision of the Bagley-Keene Act. Accordingly, the specific language of the Act must be consulted to determine what is authorized for discussion in closed session.

Because the purpose of the closed session exception is to confer with legal counsel, the attorney must be present during the entire closed session devoted to the pending litigation. The Act's pending litigation exception covers both the receipt of advice from counsel and the making of

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[5] *San Diego Union v. City Council* (1983) 146 Cal.App.3d 947.

litigation decisions (e.g., whether to file an action, and if so, what approach should be taken, whether settlement should be considered, and if so, what the settlement terms should be.

What happens in a situation where a body desires legal advice from counsel, but the Act's pending litigation exception does not apply? In such a case, legal counsel can either (1) provide the legal advice orally and discuss it in open session; or (2) deliver a one-way legal advice memorandum to the board members. The memorandum would constitute a record containing an attorney-client privileged communication and would be protected from disclosure under section 6254(k) of the Public Records Act. (11125.1(a).) However, when the board members receive that memorandum, they may discuss it only in open session, unless there is a specific exception that applies which allows them to consider it in closed session.[6]

- **Deliberations Exception**

The purpose of the deliberations exception is to permit a body to deliberate on decisions in a proceeding under the Administrative Procedures Act, or under similar provisions of law, in closed session. (§ 11126(c)(3).)

- **Real Property Exception**

Under the Act, the real-property exception provides that the body can, in closed session, advise its negotiator in situations involving real estate transactions and in negotiations regarding price and terms of payment. (§ 11126(c)(7).) However, before meeting in closed session, the body must identify the specific parcel in question and the party with whom it is negotiating. Again, the Act requires that the body properly notice its intent to hold a closed session and ~~to~~ cite the applicable authority enabling it to do so.

- **Security Exception**

A state body may, upon a two-thirds vote of those present, conduct a closed session to consider matters posing a potential threat of criminal or terrorist activity against the personnel, property, buildings, facilities, or equipment, including electronic data, owned, leased, or controlled by the state body, where disclosure of these considerations could adversely affect their safety or security. (11126(c)(18).) After such a closed session, the state body must reconvene in open session prior to adjournment and report that a closed session was held along with a description of the general nature of the matters considered, and whether any action was taken in closed session.

Whenever a state body utilizes this closed session exception, it must also provide specific written notice to the Legislative Analyst who must retain this information for at least four years. (11126(c)(18)(D).) This closed session exception will sunset in 2006. (11126(h).)

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[6] *Roberts* v. *City of Palmdale* (1993) 5 Cal.4th 363, 381.

REMEDIES FOR VIOLATIONS

The Act provides for remedies and penalties in situations where violations have allegedly occurred. Depending on the particular circumstances, the decision of the body may be overturned (§ 11130.3), violations may be stopped or prevented (§ 11130), costs and fees may be awarded (§11130.5), and in certain situations, there may be criminal misdemeanor penalties imposed as well. (§ 11130.7.)

Within 90 days of a decision or action of the body, any interested person may file suit alleging a violation of the Act and seeking to overturn the decision or action. Among other things, such suit may allege an unauthorized closed session or an improperly noticed meeting. Although the body is permitted to cure and correct a violation so as to avoid having its decision overturned, this can be much like trying to put toothpaste back in the tube. If possible, the body should try to return to a point prior to when the violation occurred and then proceed properly. For example, if the violation involves improper notice, we recommend that the body invalidate its decision, provide proper notice, and start the process over. To the extent that information has been received, statements made, or discussions have taken place, we recommend that the body include all of this on the record to ensure that everyone is aware of these events and has had an opportunity to respond.

In certain situations where a body has violated the Act, the decision can not be set aside or overturned; namely, where the action taken concerns the issuance of bonds, the entering into contracts where there has been detrimental reliance, the collection of taxes, and, in situations where there has been substantial compliance with the requirements of the Act. (11130.3(b).)

Another remedy in dealing with a violation of the Act involves filing a lawsuit to stop or prevent future violations of the Act. (§ 11130.) In general, these legal actions are filed as injunctions, writs of mandates, or suits for declaratory relief. The Legislature has also authorized the Attorney General, the District Attorney or any other interested person to use these remedies to seek judicial redress for past violations of the Act.

A prevailing plaintiff may recover the costs of suit and attorney's fees from the body (not individual members). (§ 11130.5.) On the other hand, if the body prevails, it may recover attorney's fees and costs only if the plaintiff's suit was clearly frivolous and totally without merit.

The Act provides for misdemeanor penalties against individual members of the body if the member attends a meeting in violation of the Act with the intent to deprive the public of information to which he or she knows, or has reason to know, the public is entitled to receive. (§ 11130.7.)

THE BAGLEY-KEENE OPEN MEETING ACT

Government Code Sections 11120-11132
(January 2004)

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THE BAGLEY-KEENE OPEN MEETING ACT

Government Code Sections 11120-11132

§ 11120. Policy statement; requirement for open meetings

11120. It is the public policy of this state that public agencies exist to aid in the conduct of the people's business and the proceedings of public agencies be conducted openly so that the public may remain informed.

In enacting this article the Legislature finds and declares that it is the intent of the law that actions of state agencies be taken openly and that their deliberation be conducted openly.

The people of this state do not yield their sovereignty to the agencies which serve them. The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may retain control over the instruments they have created.

This article shall be known and may be cited as the Bagley-Keene Open Meeting Act.

§ 11121. State body

11121. As used in this article, "state body" means each of the following:

(a) Every state board, or 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.

(b) A board, commission, committee, or similar multimember body that exercises any authority of a state body delegated to it by that state body.

(c) An advisory board, advisory commission, advisory committee, advisory subcommittee, or similar multimember advisory body of a state body, if created by formal action of the state body or of any member of the state body, and if the advisory body so created consists of three or more persons.

(d) A board, commission, committee, or similar multimember body on which a member of a body that is a state body pursuant to this section serves in his or her official capacity as a representative of that state body and that is supported, in whole or in part, by funds provided by the state body, whether the multimember body is organized and operated by the state body or by a private corporation.

§ 11121.1. State body; exceptions

11121.1. As used in this article, "state body" does not include any of the following:

(a) State agencies provided for in Article VI of the California Constitution.

(b) Districts or other local agencies whose meetings are required to be open to the public pursuant to the Ralph M. Brown Act (Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5).

(c) State agencies provided for in Article IV of the California Constitution whose meetings are required to be open to the public pursuant to the Grunsky-Burton Open Meeting Act (Article 2.2 (commencing with Section 9027) of Chapter 1.5 of Part 1 of Division 2 of Title 2).

(d) State agencies when they are conducting proceedings pursuant to Section 3596.

(e) State agencies provided for in Section 109260 of the Health and Safety Code, except as provided in Section 109390 of the Health and Safety Code.

(f) State agencies provided for in Section 11770.5 of the Insurance Code.

(g) The Credit Union Advisory Committee established pursuant to Section 14380 of the Financial Code.

§ 11121.9. Requirement to provide law to members

11121.9. Each state body shall provide a copy of this article to each member of the state body upon his or her appointment to membership or assumption of office.

§ 11121.95. Application to persons who have not assumed office

11121.95. Any person appointed or elected to serve as a member of a state body who has not yet assumed the duties of office shall conform his or her conduct to the requirements of this article and shall be treated for purposes of this article as if he or she has already assumed office.

§ 11122. Action taken; defined

11122. As used in this article "action taken" means a collective decision made by the members of a state body, a collective commitment or promise by the members of the state body to make a positive or negative decision or an actual vote by the members of a state body when sitting as a body or entity upon a motion, proposal, resolution, order or similar action.

§ 11122.5. Meeting defined; exceptions

11122.5. (a) As used in this article, "meeting" includes any congregation of a majority of the members of a state body at the same time and place to hear, discuss, or deliberate upon any item that is within the subject matter jurisdiction of the state body to which it pertains.

(b) Except as authorized pursuant to Section 11123, any use of direct communication, personal intermediaries, or technological devices that is employed by a majority of the members of the state body to develop a collective concurrence as to action to be taken on an item by the members of the state body is prohibited.

(c) The prohibitions of this article do not apply to any of the following:

(1) Individual contacts or conversations between a member of a state body and any other person.

(2) The attendance of a majority of the members of a state body at a conference or similar gathering open to the public that involves a discussion of issues of general interest to the public or to public agencies of the type represented by the state body, provided that a majority of the members do not discuss among themselves, other than as part of the scheduled program, business of a specified nature that is within the subject matter jurisdiction of the state body. This paragraph is not intended to allow members of the public free admission to a conference or similar gathering at which the organizers have required other participants or registrants to pay fees or charges as a condition of attendance.

(3) The attendance of a majority of the members of a state body at an open and publicized meeting organized to address a topic of state concern by a person or organization other than the state body, provided that a majority of the members do not discuss among themselves, other than as part of the scheduled program, business of a specific nature that is within the subject matter jurisdiction of the state body.

(4) The attendance of a majority of the members of a state body at an open and noticed meeting of another state body or of a legislative body of a local agency as defined by Section 54951, provided that a majority of the members do not discuss among themselves, other than as part of the scheduled meeting, business of a specific nature that is within the subject matter jurisdiction of the other state body.

(5) The attendance of a majority of the members of a state body at a purely social or ceremonial occasion, provided that a majority of the members do not discuss among themselves business of a specific nature that is within the subject matter jurisdiction of the state body.

(6) The attendance of a majority of the members of a state body at an open and noticed meeting of a standing committee of that body, provided that the members of the state body who are not members of the standing committee attend only as observers.

§ 11123. Requirement for open meetings; teleconference meetings

11123. (a) All meetings of a state body shall be open and public and all persons shall be permitted to attend any meeting of a state body except as otherwise provided in this article.

(b) (1) This article does not prohibit a state body from holding an open or closed meeting by teleconference for the benefit of the public and state body. The meeting or proceeding held by teleconference shall otherwise comply with all applicable requirements or laws relating to a specific type of meeting or proceeding, including the following:

(A) The teleconferencing meeting shall comply with all requirements of this article applicable to other meetings.

(B) The portion of the teleconferenced meeting that is required to be open to the public shall be audible to the public at the location specified in the notice of the meeting.

(C) If the state body elects to conduct a meeting or proceeding by teleconference, it shall post agendas at all teleconference locations and conduct teleconference meetings in a manner that protects the rights of any party or member of the public appearing before the state body. Each teleconference location shall be identified in the notice and agenda of the meeting or proceeding, and each teleconference location shall be accessible to the public. The agenda shall provide an opportunity for members of the public to address the state body directly pursuant to Section 11125.7 at each teleconference location.

(D) All votes taken during a teleconferenced meeting shall be by rollcall.

(E) The portion of the teleconferenced meeting that is closed to the public may not include the consideration of any agenda item being heard pursuant to Section 11125.5.

(F) At least one member of the state body shall be physically present at the location specified in the notice of the meeting.

(2) For the purposes of this subdivision, "teleconference" means a meeting of a state body, the members of which are at different locations, connected by electronic means, through either audio or both audio and video. This section does not prohibit a state body from providing members of the public with additional locations in which the public may observe or address the state body by electronic means, through either audio or both audio and video.

§ 11123.1. Compliance with the ADA

11123.1. All meetings of a state body that are open and public shall meet the protections and prohibitions contained in Section 202 of the Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12132), and the federal rules and regulations adopted in implementation thereof.

§ 11124. No conditions for attending meetings

11124. No person shall be required, as a condition to attendance at a meeting of a state body, to register his or her name, to provide other information, to complete a questionnaire, or otherwise to fulfill any condition precedent to his or her attendance. If an attendance list, register, questionnaire, or other similar document is posted at or near the entrance to the room where the meeting is to be held, or is circulated to persons present during the meeting, it shall state clearly that the signing, registering, or completion of the document is voluntary, and that all persons may attend the meeting regardless of whether a person signs, registers, or completes the document.

§ 11124.1. Right to record meetings

11124.1. (a) Any person attending an open and public meeting of the state body shall have the right to record the proceedings with an audio or video tape recorder or a still or motion picture camera in the absence of a reasonable finding by the state body that the recording cannot continue without noise, illumination, or obstruction of view that constitutes, or would constitute, a persistent disruption of the proceedings.

(b) Any tape or film record of an open and public meeting made for whatever purpose by or at the direction of the state body shall be subject to inspection pursuant to the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1), but may be erased or destroyed 30 days after the taping or recording. Any inspection of an audio or video tape recording shall be provided without charge on an audio or video tape player made available by the state body.

(c) No state body shall prohibit or otherwise restrict the broadcast of its open and public meetings in the absence of a reasonable finding that the broadcast cannot be accomplished without noise, illumination, or obstruction of view that would constitute a persistent disruption of the proceedings.

§ 11125. Required notice

11125. (a) The state body shall provide notice of its meeting to any person who requests that notice in writing. Notice shall be given and also made available on the Internet at least 10 days in advance of the meeting, and shall include the name, address, and telephone number of any person who can provide further information prior to the meeting, but need not include a list of witnesses expected to appear at the meeting. The written notice shall additionally include the address of the Internet site where notices required by this article are made available.

(b) The notice of a meeting of a body that is a state body shall include a specific agenda for the meeting, containing a brief description of the items of business to be transacted or discussed in either open or closed session. A brief general description of an item generally need not exceed 20 words. A description of an item to be transacted or discussed in closed session shall include a citation of the specific statutory authority under which a closed session is being held. No item shall be added to the agenda subsequent to the provision of this notice, unless otherwise permitted by this article.

(c) Notice of a meeting of a state body that complies with this section shall also constitute notice of a meeting of an advisory body of that state body, provided that the business to be discussed by the advisory body is covered by the notice of the meeting of the state body, provided that the specific time and place of the advisory body's meeting is announced during the open and public state body's meeting, and provided that the advisory body's meeting is conducted within a reasonable time of, and nearby, the meeting of the state body.

(d) A person may request, and shall be provided, notice pursuant to subdivision (a) for all meetings of a state body or for a specific meeting or meetings. In addition, at the state body's discretion, a person may request, and may be provided, notice of only those meetings of a state body at which a particular subject or subjects specified in the request will be discussed.

(e) A request for notice of more than one meeting of a state body shall be subject to the provisions of Section 14911.

(f) The notice shall be made available in appropriate alternative formats, as required by Section 202 of the Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12132), and the federal rules and regulations adopted in implementation thereof, upon request by any person with a disability. The notice shall include information regarding how, to whom, and by when a request for any disability-related modification or accommodation, including auxiliary aids or services may be made by a person with a disability who requires these aids or services in order to participate in the public meeting.

§ 11125.1. Agenda; writings provided to body; public records

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. These writings shall be made available in appropriate alternative formats, as required by Section 202 of the Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12132), and the federal rules and regulations adopted in implementation thereof, upon request by a person with a disability.

(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.

(3) Made available on the Internet.

(d) Prior to the State Board of Equalization taking final action on any item that does not involve a named tax or fee payer, writings pertaining to that item that are public records under subdivision (a) that are prepared and distributed by board staff or individual members to members of the state body prior to or during a meeting shall be:

(1) Made available for public inspection at that meeting.

(2) Distributed to all persons who request or have requested copies of these writings.

(3) Made available on the Internet.

(e) 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 6253, except that no surcharge shall be imposed on persons with disabilities in violation of Section 202 of the Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12132), and the federal rules and regulations adopted in implementation thereof. 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.

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

§ 11125.2. Announcement of personnel action

11125.2. Any state body shall report publicly at a subsequent public meeting any action taken, and any rollcall vote thereon, to appoint, employ, or dismiss a public employee arising out of any closed session of the state body.

§ 11125.3. Exception to agenda requirements

11125.3. (a) Notwithstanding Section 11125, a state body may take action on items of business not appearing on the posted agenda under any of the conditions stated below:

(1) Upon a determination by a majority vote of the state body that an emergency situation exists, as defined in Section 11125.5.

(2) Upon a determination by a two-thirds vote of the state body, or, if less than two-thirds of the members are present, a unanimous vote of those members present, that there exists a need to take immediate action and that the need for action came to the attention of the state body subsequent to the agenda being posted as specified in Section 11125.

(b) Notice of the additional item to be considered shall be provided to each member of the state body and to all parties that have requested notice of its meetings as soon as is practicable after a determination of the need to consider the item is made, but shall be delivered in a manner that allows it to be received by the members and by newspapers of general circulation and radio or television stations at least 48 hours before the time of the meeting specified in the notice. Notice shall be made available to newspapers of general circulation and radio or television stations by providing that notice to all national press wire services. Notice shall also be made available on the Internet as soon as is practicable after the decision to consider additional items at a meeting has been made.

§ 11125.4. Special meetings

11125.4. (a) A special meeting may be called at any time by the presiding officer of the state body or by a majority of the members of the state body. A special meeting may only be called for one of the following purposes where compliance with the 10-day notice provisions of Section 11125 would impose a substantial hardship on the state body or where immediate action is required to protect the public interest:

(1) To consider "pending litigation" as that term is defined in subdivision (e) of Section 11126.

(2) To consider proposed legislation.

(3) To consider issuance of a legal opinion.

(4) To consider disciplinary action involving a state officer or employee.

(5) To consider the purchase, sale, exchange, or lease of real property.

(6) To consider license examinations and applications.

(7) To consider an action on a loan or grant provided pursuant to Division 31 (commencing with Section 50000) of the Health and Safety Code.

(b) When a special meeting is called pursuant to one of the purposes specified in subdivision (a), the state body shall provide notice of the special meeting to each member of the state body and to all parties that have requested notice of its meetings as soon as is practicable after the decision to call a special meeting has been made, but shall be delivered in a manner that allows it to be received by the members and by newspapers of general circulation and radio or television stations at least 48 hours before the time of the special meeting specified in the notice. Notice shall be made available to newspapers of general circulation and radio or television stations by providing that notice to all national press wire services. Notice shall also be made available on the Internet within the time periods required by this section. The notice shall specify the time and place of the special meeting and the business to be transacted. The written notice shall additionally specify the address of the Internet site where notices required by this article are made available. No other business shall be considered at a special meeting by the state body. The written notice may be dispensed with as to any member who at or prior to the time the meeting convenes files with the clerk or secretary of the state body a written waiver of notice. The waiver may be given by telegram, facsimile transmission, or similar means. The written notice may also be dispensed with as to any member who is actually present at the meeting at the time it convenes. Notice shall be required pursuant to this section regardless of whether any action is taken at the special meeting.

(c) At the commencement of any special meeting, the state body must make a finding in open session that the delay necessitated by providing notice 10 days prior to a meeting as required by Section 11125 would cause a substantial hardship on the body or that immediate action is required to protect the public interest. The finding shall set forth the specific facts that constitute the hardship to the body or the impending harm to the public interest. The finding shall be adopted by a two-thirds vote of the body, or, if less than two-thirds of the members are present, a unanimous vote of those members present. The finding shall be made available on the Internet. Failure to adopt the finding terminates the meeting.

§ 11125.5. Emergency meetings

11125.5. (a) In the case of an emergency situation involving matters upon which prompt action is necessary due to the disruption or threatened disruption of public facilities, a state body may hold an emergency meeting without complying with the 10-day notice requirement of Section 11125 or the 48-hour notice requirement of Section 11125.4.

(b) For purposes of this section, "emergency situation" means any of the following, as determined by a majority of the members of the state body during a meeting prior to the emergency meeting, or at the beginning of the emergency meeting:

(1) Work stoppage or other activity that severely impairs public health or safety, or both.

(2) Crippling disaster that severely impairs public health or safety, or both.

(c) However, newspapers of general circulation and radio or television stations that have requested notice of meetings pursuant to Section 11125 shall be notified by the presiding officer of the state body, or a designee thereof, one hour prior to the emergency meeting by telephone. Notice shall also be made available on the Internet as soon as is practicable after the decision to call the emergency meeting has been made. If telephone services are not functioning, the notice requirements of this section shall be deemed waived, and the presiding officer of the state body, or a designee thereof, shall notify those newspapers, radio stations, or television stations of the fact of the holding of the emergency meeting, the purpose of the meeting, and any action taken at the meeting as soon after the meeting as possible.

(d) The minutes of a meeting called pursuant to this section, a list of persons who the presiding officer of the state body, or a designee thereof, notified or attempted to notify, a copy of the rollcall vote, and any action taken at the meeting shall be posted for a minimum of 10 days in a public place, and also made available on the Internet for a minimum of 10 days, as soon after the meeting as possible.

§ 11125.6. Emergency meetings; Fish and Game Commission

11125.6. (a) An emergency meeting may be called at any time by the president of the Fish and Game Commission or by a majority of the members of the commission to consider an appeal of a closure of or restriction in a fishery adopted pursuant to Section 7710 of the Fish and Game Code. In the case of an emergency situation involving matters upon which prompt action is necessary due to the disruption or threatened disruption of an established fishery, the commission may hold an emergency meeting without complying with the 10-day notice requirement of Section 11125 or the 48-hour notice requirement of Section 11125.4 if the delay necessitated by providing the 10-day notice of a public meeting required by Section 11125 or the 48-hour notice required by Section 11125.4 would significantly adversely impact the economic benefits of a fishery to the participants in the fishery and to the people of the state or significantly adversely impact the sustainability of a fishery managed by the state.

(b) At the commencement of an emergency meeting called pursuant to this section, the commission shall make a finding in open session that the delay necessitated by providing notice 10 days prior to a meeting as required by Section 11125 or 48 hours prior to a meeting as required by Section 11125.4 would significantly adversely impact the economic benefits of a fishery to the participants in the fishery and to the people of the state or significantly adversely impact the sustainability of a fishery managed by the state. The finding shall set forth the specific facts that

constitute the impact to the economic benefits of the fishery or the sustainability of the fishery. The finding shall be adopted by a vote of at least four members of the commission, or, if less than four of the members are present, a unanimous vote of those members present. Failure to adopt the finding shall terminate the meeting.

(c) Newspapers of general circulation and radio or television stations that have requested notice of meetings pursuant to Section 11125 shall be notified by the presiding officer of the commission, or a designee thereof, one hour prior to the emergency meeting by telephone.

(d) The minutes of an emergency meeting called pursuant to this section, a list of persons who the president of the commission, or a designee thereof, notified or attempted to notify, a copy of the rollcall vote, and any action taken at the meeting shall be posted for a minimum of 10 days in a public place as soon after the meeting as possible.

§ 11125.7 Opportunity for public to speak at meeting

11125.7. (a) Except as otherwise provided in this section, the state body shall provide an opportunity for members of the public to directly address the state body on each agenda item before or during the state body's discussion or consideration of the item. This section is not applicable if the agenda item has already been considered by a committee composed exclusively of members of the state body at a public meeting where interested members of the public were afforded the opportunity to address the committee on the item, before or during the committee's consideration of the item, unless the item has been substantially changed since the committee heard the item, as determined by the state body. Every notice for a special meeting at which action is proposed to be taken on an item shall provide an opportunity for members of the public to directly address the state body concerning that item prior to action on the item. In addition, the notice requirement of Section 11125 shall not preclude the acceptance of testimony at meetings, other than emergency meetings, from members of the public, provided, however, that no action is taken by the state body at the same meeting on matters brought before the body by members of the public.

(b) The state body may adopt reasonable regulations to ensure that the intent of subdivision (a) is carried out, including, but not limited to, regulations limiting the total amount of time allocated for public comment on particular issues and for each individual speaker.

(c) The state body shall not prohibit public criticism of the policies, programs, or services of the state body, or of the acts or omissions of the state body. Nothing in this subdivision shall confer any privilege or protection for expression beyond that otherwise provided by law.

(d) This section is not applicable to closed sessions held pursuant to Section 11126.

(e) This section is not applicable to decisions regarding proceedings held pursuant to Chapter 5 (commencing with Section 11500), relating to administrative adjudication, or to the conduct of those proceedings.

(f) This section is not applicable to hearings conducted by the State Board of Control pursuant to Sections 13963 and 13963.1.

(g) This section is not applicable to agenda items that involve decisions of the Public Utilities Commission regarding adjudicatory hearings held pursuant to Chapter 9 (commencing with Section 1701) of Part 1 of Division 1 of the Public Utilities Code. For all other agenda items, the commission shall provide members of the public, other than those who have already participated in the proceedings underlying the agenda item, an opportunity to directly address the commission before or during the commission's consideration of the item.

§ 11125.8. Closed session; Board of Control; crime victims

11125.8. (a) Notwithstanding Section 11131.5, in any hearing that the State Board of Control conducts pursuant to Section 13963.1 and that the applicant or applicant's representative does not request be open to the public, no notice, agenda, announcement, or report required under this article need identify the applicant.

(b) In any hearing that the board conducts pursuant to Section 13963.1 and that the applicant or applicant's representative does not request be open to the public, the board shall disclose that the hearing is being held pursuant to Section 13963.1. That disclosure shall be deemed to satisfy the requirements of subdivision (a) of Section 11126.3.

§ 11125.9. Regional water quality control boards; additional notice requirements

11125.9. Regional water quality control boards shall comply with the notification guidelines in Section 11125 and, in addition, shall do both of the following:

(a) Notify, in writing, all clerks of the city councils and county boards of supervisors within the regional board's jurisdiction of any and all board hearings at least 10 days prior to the hearing. Notification shall include an agenda for the meeting with contents as described in subdivision (b) of Section 11125 as well as the name, address, and telephone number of any person who can provide further information prior to the meeting, but need not include a list of witnesses expected to appear at the meeting. Each clerk, upon receipt of the notification of a board hearing, shall distribute the notice to all members of the respective city council or board of supervisors within the regional board's jurisdiction.

(b) Notify, in writing, all newspapers with a circulation rate of at least 10,000 within the regional board's jurisdiction of any and all board hearings, at least 10 days prior to the hearing. Notification shall include an agenda for the meeting with contents as described in subdivision (b) of Section 11125 as well as the name, address, and telephone number of any person who can provide further information prior to the meeting, but need not include a list of witnesses expected to appear at the meeting.

§ 11126. Closed sessions

11126. (a)(1) Nothing in this article shall be construed to prevent a state body from holding closed sessions during a regular or special meeting to consider the 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.

(2) As a condition to holding a closed session on the complaints or charges to consider disciplinary action or to consider dismissal, the employee shall be given written notice of his or her right to have a public hearing, rather than a closed session, and that notice shall be delivered to the employee personally or by mail at least 24 hours before the time for holding a regular or special meeting. If notice is not given, any disciplinary or other action taken against any employee at the closed session shall be null and void.

(3) The state body also may exclude from any public or closed session, during the examination of a witness, any or all other witnesses in the matter being investigated by the state body.

(4) Following the public hearing or closed session, the body may deliberate on the decision to be reached in a closed session.

(b) For the purposes of this section, "employee" does not include any person who is elected to, or appointed to a public office by, any state body. However, officers of the California State University who receive compensation for their services, other than per diem and ordinary and necessary expenses, shall, when engaged in that capacity, be considered employees. Furthermore, for purposes of this section, the term employee includes a person exempt from civil service pursuant to subdivision (e) of Section 4 of Article VII of the California Constitution.

(c) Nothing in this article shall be construed to do any of the following:

(1) Prevent state bodies that administer the licensing of persons engaging in businesses or professions from holding closed sessions to prepare, approve, grade, or administer examinations.

(2) Prevent an advisory body of a state body that administers the licensing of persons engaged in businesses or professions from conducting a closed session to discuss matters that the advisory body has found would constitute an unwarranted invasion of the privacy of an individual licensee or applicant if discussed in an open meeting, provided the advisory body does not include a quorum of the members of the state body it advises. Those matters may include review of an applicant's qualifications for licensure and an inquiry specifically related to the state body's enforcement program concerning an individual licensee or applicant where the inquiry occurs prior to the filing of a civil, criminal, or administrative disciplinary action against the licensee or applicant by the state body.

(3) Prohibit a state body from holding a closed session to deliberate on a decision to be reached in a proceeding required to be conducted pursuant to Chapter 5 (commencing with Section 11500) or similar provisions of law.

(4) Grant a right to enter any correctional institution or the grounds of a correctional institution where that right is not otherwise granted by law, nor shall anything in this article be construed to prevent a state body from holding a closed session when considering and acting upon the determination of a term, parole, or release of any individual or other disposition of an individual case, or if public disclosure of the subjects under discussion or consideration is expressly prohibited by statute.

(5) Prevent any closed session to consider the conferring of honorary degrees, or gifts, donations, and bequests that the donor or proposed donor has requested in writing to be kept confidential.

(6) Prevent the Alcoholic Beverage Control Appeals Board from holding a closed session for the purpose of holding a deliberative conference as provided in Section 11125.

(7) (A) Prevent a state body from holding closed sessions with its negotiator prior to the purchase, sale, exchange, or lease of real property by or for the state body to give instructions to its negotiator regarding the price and terms of payment for the purchase, sale, exchange, or lease.

(B) However, prior to the closed session, the state body shall hold an open and public session in which it identifies the real property or real properties that the negotiations may concern and the person or persons with whom its negotiator may negotiate.

(C) For purposes of this paragraph, the negotiator may be a member of the state body.

(D) For purposes of this paragraph, "lease" includes renewal or renegotiation of a lease.

(E) Nothing in this paragraph shall preclude a state body from holding a closed session for discussions regarding eminent domain proceedings pursuant to subdivision (e).

(8) Prevent the California Postsecondary Education Commission from holding closed sessions to consider matters pertaining to the appointment or termination of the Director of the California Postsecondary Education Commission.

(9) Prevent the Council for Private Postsecondary and Vocational Education from holding closed sessions to consider matters pertaining to the appointment or termination of the Executive Director of the Council for Private Postsecondary and Vocational Education.

(10) Prevent the Franchise Tax Board from holding closed sessions for the purpose of discussion of 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.

(11) Require the Franchise Tax Board to notice or disclose any confidential tax information considered in closed sessions, or documents executed in connection therewith, the public disclosure of which is prohibited pursuant to Article 2 (commencing with Section 19542) of Chapter 7 of Part 10.2 of the Revenue and Taxation Code.

(12) Prevent the Board of Corrections from holding closed sessions when considering reports of crime conditions under Section 6027 of the Penal Code.

(13) Prevent the State Air Resources Board from holding closed sessions when considering the proprietary specifications and performance data of manufacturers.

(14) Prevent the State Board of Education or the Superintendent of Public Instruction, or any committee advising the board or the superintendent, from holding closed sessions on those portions of its review of assessment instruments pursuant to Chapter 5 (commencing with Section 60600) of, or pursuant to Chapter 8 (commencing with Section 60850) of, Part 33 of the Education Code during which actual test content is reviewed and discussed. The purpose of this provision is to maintain the confidentiality of the assessments under review.

(15) Prevent the California Integrated Waste Management Board or its auxiliary committees from holding closed sessions for the purpose of discussing confidential tax returns, discussing trade secrets or confidential or proprietary information in its possession, or discussing other data, the public disclosure of which is prohibited by law.

(16) Prevent a state body that invests retirement, pension, or endowment funds from holding closed sessions when considering investment decisions. For purposes of consideration of shareholder voting on corporate stocks held by the state body, closed sessions for the purposes of voting may be held only with respect to election of corporate directors, election of independent auditors, and other financial issues that could have a material effect on the net income of the corporation. For the purpose of real property investment decisions that may be considered in a closed session pursuant to this paragraph, a state body shall also be exempt from the provisions of paragraph (7) relating to the identification of real properties prior to the closed session.

(17) Prevent a state body, or boards, commissions, administrative officers, or other representatives that may properly be designated by law or by a state body, from holding closed sessions with its representatives in discharging its responsibilities under Chapter 10 (commencing with Section 3500), Chapter 10.3 (commencing with Section 3512), Chapter 10.5 (commencing with Section 3525), or Chapter 10.7 (commencing of Section 3540) of Division 4 of Title 1 as the sessions relate to salaries, salary schedules, or compensation paid in the form of fringe benefits. For the purposes enumerated in the preceding sentence, a state body may also meet with a state conciliator who has intervened in the proceedings.

(18) (A) Prevent a state body from holding closed sessions to consider matters posing a threat or potential threat of criminal or terrorist activity against the personnel, property, buildings, facilities, or equipment, including electronic data, owned, leased, or controlled by the state body, where disclosure of these considerations could compromise or impede the safety or security of the personnel, property, buildings, facilities, or equipment, including electronic data, owned, leased, or controlled by the state body.

(B) Notwithstanding any other provision of law, a state body, at any regular or special meeting, may meet in a closed session pursuant to subparagraph (A) upon a two-thirds vote of the members present at the meeting.

(C) After meeting in closed session pursuant to subparagraph (A), the state body shall reconvene in open session prior to adjournment and report that a closed session was held pursuant to subparagraph (A), the general nature of the matters considered, and whether any action was taken in closed session.

(D) After meeting in closed session pursuant to subparagraph (A), the state body shall submit to the Legislative Analyst written notification stating that it held this closed session, the general reason or reasons for the closed session, the general nature of the matters considered, and whether any action was taken in closed session. The Legislative Analyst shall retain for no less than four years any written notification received from a state body pursuant to this subparagraph.

(d)(1) Notwithstanding any other provision of law, any meeting of the Public Utilities Commission at which the rates of entities under the commission's jurisdiction are changed shall be open and public.

(2) Nothing in this article shall be construed to prevent the Public Utilities Commission from holding closed sessions to deliberate on the institution of proceedings, or disciplinary actions against any person or entity under the jurisdiction of the commission.

(e) (1) Nothing in this article shall be construed to prevent a state body, based on the advice of its legal counsel, from holding a closed session to confer with, or receive advice from, its legal counsel regarding pending litigation when discussion in open session concerning those matters would prejudice the position of the state body in the litigation.

(2) For purposes of this article, all expressions of the lawyer-client privilege other than those provided in this subdivision are hereby abrogated. This subdivision is the exclusive expression of the lawyer-client privilege for purposes of conducting closed session meetings pursuant to this article. For purposes of this subdivision, litigation shall be considered pending when any of the following circumstances exist:

(A) An adjudicatory proceeding before a court, an administrative body exercising its adjudicatory authority, a hearing officer, or an arbitrator, to which the state body is a party, has been initiated formally.

(B)(i) A point has been reached where, in the opinion of the state body on the advice of its legal counsel, based on existing facts and circumstances, there is a significant exposure to litigation against the state body.

(ii) Based on existing facts and circumstances, the state body is meeting only to decide whether a closed session is authorized pursuant to clause (i).

(C) (i) Based on existing facts and circumstances, the state body has decided to initiate or is deciding whether to initiate litigation.

(ii) The legal counsel of the state body shall prepare and submit to it a memorandum stating the specific reasons and legal authority for the closed session. If the closed session is pursuant to paragraph (1), the memorandum shall include the title of the litigation. If the closed session is pursuant to subparagraph (A) or (B), the memorandum shall include the existing facts and circumstances on which it is based. The legal counsel shall submit the memorandum to the state body prior to the closed session, if feasible, and in any case no later than one week after the closed session. The memorandum shall be exempt from disclosure pursuant to Section 6254.25.

(iii) For purposes of this subdivision, "litigation" includes any adjudicatory proceeding, including eminent domain, before a court, administrative body exercising its adjudicatory authority, hearing officer, or arbitrator.

(iv) Disclosure of a memorandum required under this subdivision shall not be deemed as a waiver of the lawyer-client privilege, as provided for under Article 3 (commencing with Section 950) of Chapter 4 of Division 8 of the Evidence Code.

(f) In addition to subdivisions (a), (b), and (c), nothing in this article shall be construed to do any of the following:

(1) Prevent a state body operating under a joint powers agreement for insurance pooling from holding a closed session to discuss a claim for the payment of tort liability or public liability losses incurred by the state body or any member agency under the joint powers agreement.

(2) Prevent the examining committee established by the State Board of Forestry and Fire Protection, pursuant to Section 763 of the Public Resources Code, from conducting a closed session to consider disciplinary action against an individual professional forester prior to the filing of an accusation against the forester pursuant to Section 11503.

(3) Prevent an administrative committee established by the California Board of Accountancy pursuant to Section 5020 of the Business and Professions Code from conducting a closed session to consider disciplinary action against an individual accountant prior to the filing of an accusation against the accountant pursuant to Section 11503. Nothing in this article shall be construed to prevent an examining committee established by the California Board of Accountancy pursuant to

Section 5023 of the Business and Professions Code from conducting a closed hearing to interview an individual applicant or accountant regarding the applicant's qualifications.

(4) Prevent a state body, as defined in subdivision (b) of Section 11121, from conducting a closed session to consider any matter that properly could be considered in closed session by the state body whose authority it exercises.

(5) Prevent a state body, as defined in subdivision (d) of Section 11121, from conducting a closed session to consider any matter that properly could be considered in a closed session by the body defined as a state body pursuant to subdivision (a) or (b) of Section 11121.

(6) Prevent a state body, as defined in subdivision (c) of Section 11121, from conducting a closed session to consider any matter that properly could be considered in a closed session by the state body it advises.

(7) Prevent the State Board of Equalization from holding closed sessions for either of the following:

(A) When considering matters pertaining to the appointment or removal of the Executive Secretary of the State Board of Equalization.

(B) For the purpose of hearing confidential taxpayer appeals or data, the public disclosure of which is prohibited by law.

(8) Require the State Board of Equalization to disclose any action taken in closed session or documents executed in connection with that action, the public disclosure of which is prohibited by law pursuant to Sections 15619 and 15641 of this code and Sections 833, 7056, 8255, 9255, 11655, 30455, 32455, 38705, 38706, 43651, 45982, 46751, 50159, 55381, and 60609 of the Revenue and Taxation Code.

(9) Prevent the California Earthquake Prediction Evaluation Council, or other body appointed to advise the Director of the Office of Emergency Services or the Governor concerning matters relating to volcanic or earthquake predictions, from holding closed sessions when considering the evaluation of possible predictions.

(g) This article does not prevent either of the following:

(1) The Teachers' Retirement Board or the Board of Administration of the Public Employees' Retirement System from holding closed sessions when considering matters pertaining to the recruitment, appointment, employment, or removal of the chief executive officer or when considering matters pertaining to the recruitment or removal of the Chief Investment Officer of the State Teachers' Retirement System or the Public Employees' Retirement System.

(2) The Commission on Teacher Credentialing from holding closed sessions when considering matters relating to the recruitment, appointment, or removal of its executive director.

(h) This section shall remain in effect only until January 1, 2006, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 2006, deletes or extends that date.

§ 11126.1. Minutes; availability

11126.1. The state body shall designate a clerk or other officer or employee of the state body, who shall then attend each closed session of the state body and keep and enter in a minute book a record of topics discussed and decisions made at the meeting. The minute book made pursuant to this section is not a public record subject to inspection pursuant to the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1), and shall be kept confidential. The minute book shall be available to members of the state body or, if a violation of this chapter is alleged to have occurred at a closed session, to a court of general jurisdiction. Such minute book may, but need not, consist of a recording of the closed session.

§ 11126.3. Required notice for closed sessions

11126.3. (a) Prior to holding any closed session, the state body shall disclose, in an open meeting, the general nature of the item or items to be discussed in the closed session. The disclosure may take the form of a reference to the item or items as they are listed by number or letter on the agenda. If the session is closed pursuant to paragraph (2) of subdivision (d) of Section 11126, the state body shall state the title of, or otherwise specifically identify, the proceeding or disciplinary action contemplated. However, should the body determine that to do so would jeopardize the body's ability to effectuate service of process upon one or more unserved parties if the proceeding or disciplinary action is commenced or that to do so would fail to protect the private economic and business reputation of the person or entity if the proceeding or disciplinary action is not commenced, then the state body shall notice that there will be a closed session and describe in general terms the purpose of that session. If the session is closed pursuant to subparagraph (A) of paragraph (2) of subdivision (e) of Section 11126, the state body shall state the title of, or otherwise specifically identify, the litigation to be discussed unless the body states that to do so would jeopardize the body's ability to effectuate service of process upon one or more unserved parties, or that to do so would jeopardize its ability to conclude existing settlement negotiations to its advantage.

(b) In the closed session, the state body may consider only those matters covered in its disclosure.

(c) The disclosure shall be made as part of the notice provided for the meeting pursuant to Section 11125 or pursuant to subdivision (a) of Section 92032 of the Education Code and of any order or notice required by Section 11129.

(d) If, after the agenda has been published in compliance with this article, any pending litigation (under subdivision (e) of Section 11126) matters arise, the postponement of which will prevent the state body from complying with any statutory, court-ordered, or other legally imposed deadline, the state body may proceed to discuss those matters in closed session and shall publicly announce in the meeting the title of, or otherwise specifically identify, the litigation to be discussed, unless the body states that to do so would jeopardize the body's ability to effectuate service of process upon one or more unserved parties, or that to do so would jeopardize its ability to conclude existing settlement negotiations to its advantage. Such an announcement shall be deemed to comply fully with the requirements of this section.

(e) Nothing in this section shall require or authorize a disclosure of names or other information that would constitute an invasion of privacy or otherwise unnecessarily divulge the particular facts concerning the closed session or the disclosure of which is prohibited by state or federal law.

(f) After any closed session, the state body shall reconvene into open session prior to adjournment and shall make any reports, provide any documentation, and make any other disclosures required by Section 11125.2 of action taken in the closed session.

(g) The announcements required to be made in open session pursuant to this section may be made at the location announced in the agenda for the closed session, as long as the public is allowed to be present at that location for the purpose of hearing the announcement.

§ 11126.5. Removal of disruptive persons

11126.5. In the event that any meeting is willfully interrupted by a group or groups of persons so as to render the orderly conduct of such meeting unfeasible and order cannot be restored by the removal of individuals who are willfully interrupting the meeting the state body conducting the meeting may order the meeting room cleared and continue in session. Nothing in this section shall prohibit the state body from establishing a procedure for readmitting an individual or individuals not responsible for willfully disturbing the orderly conduct of the meeting. Notwithstanding any other provision of law, only matters appearing on the agenda may be considered in such a session. Representatives of the press or other news media, except those participating in the disturbance, shall be allowed to attend any session held pursuant to this section.

§ 11126.7. Charging fees prohibited

11126.7. No fees may be charged by a state body for providing a notice required by Section 11125 or for carrying out any provision of this article, except as specifically authorized pursuant to this article.

§ 11127. State bodies covered

11127. Each provision of this article shall apply to every state body unless the body is specifically excepted from that provision by law or is covered by any other conflicting provision of law.

§ 11128. Time restrictions for holding closed sessions

11128. Each closed session of a state body shall be held only during a regular or special meeting of the body.

§ 11128.5. Adjournment

11128.5. The state body may adjourn any regular, adjourned regular, special, or adjourned special meeting to a time and place specified in the order of adjournment. Less than a quorum may so adjourn from time to time. If all members are absent from any regular or adjourned regular meeting, the clerk or secretary of the state body may declare the meeting adjourned to a stated time and place and he or she shall cause a written notice of the adjournment to be given in the same manner as provided in Section 11125.4 for special meetings, unless that notice is waived as provided for special meetings. A copy of the order or notice of adjournment shall be conspicuously posted on or near the door of the place where the regular, adjourned regular, special, or adjourned special meeting was held within 24 hours after the time of the adjournment. When a regular or adjourned regular meeting is adjourned as provided in this section, the resulting adjourned regular meeting is a regular meeting for all purposes. When an order of adjournment of any meeting fails to state the hour at which the adjourned meeting is to be held, it shall be held at the hour specified for regular meetings by law or regulation.

§ 11129. Continuation of meeting; notice requirement

11129. Any hearing being held, or noticed or ordered to be held by a state body at any meeting may by order or notice of continuance be continued or recontinued to any subsequent meeting of the state body in the same manner and to the same extent set forth in Section 11128.5 for the adjournment of meetings. A copy of the order or notice of continuance shall be conspicuously posted on or near the door of the place where the hearing was held within 24 hours after the time of the continuance; provided, that if the hearing is continued to a time less than 24 hours after the time specified in the order or notice of hearing, a copy of the order or notice of continuance of hearing shall be posted immediately following the meeting at which the order or declaration of continuance was adopted or made.

§ 11130. Legal remedies to stop or prohibit violations of act

11130. (a) The Attorney General, the district attorney, or any interested person may commence an action by mandamus, injunction, or declaratory relief for the purpose of stopping or preventing violations or threatened violations of this article or to determine the applicability of this

article to past actions or threatened future action by members of the state body or to determine whether any rule or action by the state body to penalize or otherwise discourage the expression of one or more of its members is valid or invalid under the laws of this state or of the United States, or to compel the state body to tape record its closed sessions as hereinafter provided.

(b) The court in its discretion may, upon a judgment of a violation of Section 11126, order the state body to tape record its closed sessions and preserve the tape recordings for the period and under the terms of security and confidentiality the court deems appropriate.

(c) (1) Each recording so kept shall be immediately labeled with the date of the closed session recorded and the title of the clerk or other officer who shall be custodian of the recording.

(2) The tapes shall be subject to the following discovery procedures:

(A) In any case in which discovery or disclosure of the tape is sought by the Attorney General, the district attorney, or the plaintiff in a civil action pursuant to this section or Section 11130.3 alleging that a violation of this article has occurred in a closed session that has been recorded pursuant to this section, the party seeking discovery or disclosure shall file a written notice of motion with the appropriate court with notice to the governmental agency that has custody and control of the tape recording. The notice shall be given pursuant to subdivision (b) of Section 1005 of the Code of Civil Procedure.

(B) The notice shall include, in addition to the items required by Section 1010 of the Code of Civil Procedure, all of the following:

(i) Identification of the proceeding in which discovery or disclosure is sought, the party seeking discovery or disclosure, the date and time of the meeting recorded, and the governmental agency that has custody and control of the recording.

(ii) An affidavit that contains specific facts indicating that a violation of the act occurred in the closed session.

(3) If the court, following a review of the motion, finds that there is good cause to believe that a violation has occurred, the court may review, in camera, the recording of that portion of the closed session alleged to have violated the act.

(4) If, following the in-camera review, the court concludes that disclosure of a portion of the recording would be likely to materially assist in the resolution of the litigation alleging violation of this article, the court shall, in its discretion, make a certified transcript of the portion of the recording a public exhibit in the proceeding.

(5) Nothing in this section shall permit discovery of communications that are protected by the attorney-client privilege.

§ 11130.3. Cause of action to void action

11130.3. (a) Any interested person may commence an action by mandamus, injunction, or declaratory relief for the purpose of obtaining a judicial determination that an action taken by a state body in violation of Section 11123 or 11125 is null and void under this section. Any action seeking such a judicial determination shall be commenced within 90 days from the date the action was taken. Nothing in this section shall be construed to prevent a state body from curing or correcting an action challenged pursuant to this section.

(b) An action shall not be determined to be null and void if any of the following conditions exist:

(1) The action taken was in connection with the sale or issuance of notes, bonds, or other evidences of indebtedness or any contract, instrument, or agreement related thereto.

(2) The action taken gave rise to a contractual obligation upon which a party has, in good faith, detrimentally relied.

(3) The action taken was in substantial compliance with Sections 11123 and 11125.

(4) The action taken was in connection with the collection of any tax.

§ 11130.5. Court costs; attorney's fees

11130.5. A court may award court costs and reasonable attorney's fees to the plaintiff in an action brought pursuant to Section 11130 or 11130.3 where it is found that a state body has violated the provisions of this article. The costs and fees shall be paid by the state body and shall not become a personal liability of any public officer or employee thereof. A court may award court costs and reasonable attorney's fees to a defendant in any action brought pursuant to Section 11130 or 11130.3 where the defendant has prevailed in a final determination of the action and the court finds that the action was clearly frivolous and totally lacking in merit.

§ 11130.7. Violation; misdemeanor

11130.7. Each member of a state body who attends a meeting of that body in violation of any provision of this article, and where the member intends to deprive the public of information to which the member knows or has reason to know the public is entitled under this article, is guilty of a misdemeanor.

§ 11131. Prohibited meeting facilities; discrimination

11131. No state agency shall conduct any meeting, conference, or other function in any facility that prohibits the admittance of any person, or persons, on the basis of race, religious creed, color, national origin, ancestry, or sex, or that is inaccessible to disabled persons, or where members of the public may not be present without making a payment or purchase. As used in this section,

"state agency" means and includes every state body, office, officer, department, division, bureau, board, council, commission, or other state agency.

§ 11131.5. Required notice; exemption for name of victim

11131.5. No notice, agenda, announcement, or report required under this article need identify any victim or alleged victim of crime, tortious sexual conduct, or child abuse unless the identity of the person has been publicly disclosed.

§ 11132. Closed sessions; express authorization required

11132. Except as expressly authorized by this article, no closed session may be held by any state body.

7) Demand Letters/Claim Filing Items

CCDA TABULATIONS OF COURT FILINGS/WARNING LETTERS

September	34	
October	16	
November	53	
December	41	
January	112	
February	119	
March	148	
April	193	
May	228	
June		
July		
August		
TOTAL	**944**	**Current Reporting Period**

ADA Violations Key Codes

Bathrooms

1 Entrance. Toilet rooms, Bathing Facilities, and Shower Rooms non-accessible

2 Clear Floor Space [Toilet Rooms]. Non- accessible fixtures and controls or non- accessible route to an accessible toilet room

3 Doors [Toilet Rooms]. Non-accessible doors to accessible toilet room

4 Doors Space [Bathrooms, Bathing Facilities, and Shower Rooms]. Doors space non accessible to accessible bathrooms

5 Lavatories and Mirrors[Toilet Rooms]. Non- accessible lavatories and mirrors provided

6 Toilet stalls. The height of toilets and flush controls of toilets or toilet paper dispenser- non-accessible

7 Grab Bars. Grab bars or other hardware in bathroom non- accessible

8 Height and Clearances. Non-accessible lavatories mounted with the rim or counter surface

9 Faucets. Non- accessible lever-operated, push-type, and electronically controlled mechanisms

10 General. Accessible bathtubs and showers non-accessible

39 Toilet seat cover dispenser non accessible

40 Liquid soap or paper towel dispenser non accessible

46 Lack of unisex ADA bathrooms

Parking

11 Non compliance number of space. (Minimum Number) Parking spaces required to be non compliance

12 Parking Spaces. Non- compliance (Accessible parking spaces)

13 Signage. Non-directional Signage . Non accessible parking spaces designated as reserved by a sign showing the symbol of accessibility

14 Passenger Loading Zones. Passenger loading zones non compliance in providing an access aisle or No van accessible aisle

Accessible Route and Entry

15 Ground surfaces. Non-accessible routes and non-accessible spaces on path of travel

16 Ramps. Location of Curb or Entrance ramps non-compliance for path of travel

17 General. Doors required non- accessible

18 Door Hardware. Handles, pulls, latches, locks, and other operating devices non-accessible

45 Accessible path is too far away or path is not clear for the accessible path

Access within Public Facility

19 General Access. Objects projecting from walls

20 Access Aisles. Non- accessible aisle or accessible dining surfaces and work surfaces

21 Maneuvering Clearances at Doors. The floor or ground area within the required clearances non-conpliance

22 Minimum Number Stairs or Guardrails. Non-accessible stairs or lack of guardrails

23 Handrails. Non conpliant Stairways or handrails

24 General elevators or route to elevators. Non accessable elevators or non-conpliance route with Tactile Braille and Visual Controls in an accessible route comply

25 Wheelchair spaces. non-accessible wheel chair space locations in assembly areas

26 Access Height. Non-accessible dining surfaces and work surfaces or Counters and Bars where food or drink is served

Equipment within Public Facility

27 Signage. Non conpliance raised and braille characters and pictorial symbol signs

28 Wheelchair Accessible Telephones. Non-accessible wheelchair accessible public telephones

29 Volume Control Telephones. Non conpliance volume controls equipped public telephones

30 General Puplic Equipment. Non Accessible gas pumps, automatic teller machines, and fare machines

37 General Pool. Non conpliance pool lifts, sloped entries, transfer walls, transfer systems, and pool stairs

38 Drinking Fountains and Water Coolers non accessible

General Categories Violations

31 Dressing, fitting, and locker rooms non- accessible
32 Non- Accessible sleeping rooms, units or suites
33 Non compliance patient bedrooms.
34 Non- Accessible audible and visual alarms and notification appliances
35 Non-accessible amusement rides
36 Non compliance station, bus stop, bus stop pad, terminal, building or other transportation facility
41 Non compliance with service dog in building
42 Lamp not accessible
43 Shuttle van not accessible
44 maintenance of accessible features non compliance
47 Website does not offer ADA options or non compliance
48 Lack of separate call button