BOARD OF DIRECTORS

Guide

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AN INTRODUCTION TO THE CALIFORNIA HOUSING FINANCE AGENCY FOR NEW BOARD MEMBERS

I. NATURE OF AGENCY

A. The primary purpose of the Agency is to create and finance progressive housing solutions, so more Californians have a place to call home. For more than 40 years, the California Housing Finance Agency (CalHFA) has supported the needs of renters and homebuyers by providing financing and programs so more low-to-moderate income Californians have a place to call home. Established in 1975, CalHFA was chartered as the state's affordable housing lender.

B. CalHFA is an independent agency of the State, not subject to the supervision or control of other government officers or agencies. The Agency is a public enterprise/proprietary fund that functions as a business.

C. CalHFA is financially independent from the State of California. The State does not back any of the Agency's financial obligations. Unlike other state agencies, CalHFA does not participate in the Legislative Budget process because its funds are continuously appropriated to the California Housing Finance Fund. The Agency does not depend upon state tax revenues (General or special funds) for its support; rather, the Agency earns moneys to pay its operating costs and expenses primarily from fees and interest earned from developers, homeowners, and other borrowers.

D. All the money the Agency manages is contained in the California Housing Finance Fund which may not be borrowed by another state entity.

E. The Agency functions through "partnerships" with the private sector. The Agency's single-family loans are originated by the private mortgage banking community and purchased by CalHFA. Multifamily projects are developed by private housing sponsors, with the loans originated and serviced by the Agency. The bonds are structured and underwritten by investment banking firms, and the Agency is advised by private law firms acting as bond counsel.

F. The Agency has authority to issue taxable and tax-exempt Mortgage Revenue Bonds. Mortgage Revenue Bonds are solely the debt of the Agency and are not the debt of the State, nor does the State pledge its full faith and credit for the repayment of the bonds. Since bondholders may only look to the Agency's assets for repayment, the Legislature has pledged to CalHFA's bondholders that it will not alter or amend any of the laws

governing the Agency in any manner that would diminish their rights under the bond indentures.

G. CalHFA is unique in state government in that it has its own general obligation credit rating from the national credit rating agencies. CalHFA's general obligation currently has an AA- issuer rating from Standard & Poor's, and an A1 rating from Moody's.

H. The homebuyers and renters that the Agency serves are legal residents of California that generally have income between 50% and 120% of area median income (AMI).

II. THE BOARD AND ITS POWERS

A. The Board consists of thirteen voting members, seven of whom are appointed by the Governor, one member appointed by the Senate, and one member appointed by the Assembly, for terms of six years; the Secretary of Business, Consumer Services & Housing, State Treasurer, Director of Housing & Community Development, and Secretary of Veteran's Affairs serve as ex officio voting members. The Executive Director of CalHFA, Director of the Department of Finance and Director of Office of Planning and Research each serves as a nonvoting member of the Board.

B. The Governor designates one of his appointed Board members to be Chairperson.

C. The Board has been charged by statute with the overall administration and control over the Agency's operation.

D. The Board generally has authority to conduct the operation of the Agency by board resolution. There are some circumstances, however, in which the Board must promulgate regulations.

E. The Board approves all bond indentures, authorizes bond issues, approves final commitments on all multifamily rental housing projects with loans above $15,000,000, all major programs and vendor contracts of the Agency, and the Agency's business plan and operating budget. Each March, the Board historically has delegated to staff the authority to issue bonds; and has approved both forms of bond indentures, and those programmatic contracts necessary to operate bond funded programs for the forthcoming year.

1. The Board has by regulation defined "major" vendor contracts as all such contracts for expenditures in excess of $1,000,000 in one fiscal year. Consequently, the Executive Director can authorize vendor contracts up to $1,000,000 without Board approval.

2. The Board has delegated authority to the Executive Director to approve all initial commitments on multifamily rental projects and final commitments on multifamily rental housing projects up to $15,000,000.

F. The Board has the sole authority to supervise the Executive Director, who is appointed by the Governor for a period of 5 years and has been charged by statute with the day-to-day operation of the Agency.

1. The Board approves the operating budget and sets the salaries of key exempt managers in amounts reasonably necessary to attract and hold persons of superior qualifications. Such salaries must be based upon a salary survey conducted by an independent consultant. Such survey must consider other comparable state and local housing finance agencies, as well as other relevant labor pools.

G. Board members are entitled to receive a per diem allowance of $100 from the Agency for each day's attendance at a meeting of the Board and reimbursement for expenses incurred in the performance of their duties, including travel and other necessary expenses, subject to state reimbursement limits.

III. BOARD MEETING

A. The Board generally meets once every other month and sometimes every month, depending upon the volume of business, although there is no specific statutory requirement fixing the number of meetings.

B. A quorum is defined as a majority of the voting members then in office.

C. The vote necessary for the passage of a resolution is a majority of the members then in office at the duly called Board meeting.

D. Board meetings are governed by the open meeting laws, specifically by the Bagley-Keene Act. This means generally that:

1. The meetings must be conducted in public after the public has been given 10 days advance notice of the meeting. Closed sessions are authorized by law in limited circumstances. The most common such circumstances for the Agency are closed sessions to receive advice from counsel relating to pending litigation and to evaluate the performance of a public employee.

2. The deliberations and vote of the Board must be made in public and generally the information presented to the Board upon which their vote is based must be either presented at the public meeting or made available to the public. A majority of the

Board cannot communicate or deliberate for purposes of reaching consensus on matters before the Board except in an open public meeting.

3. The Board can only vote on subjects that have been properly agendized in the Notice of the Board meeting.

4. The Board can conduct emergency meetings on less than ten days' notice under special circumstances, as defined by law.

5. There are no specific rules of procedure governing the Board but the Board, like many state agencies, has applied procedures similar to Robert's Rules of Order. However, there is nothing to prevent the Board from establishing its own rules of procedure if they are consistent with the Bagley-Keene Act.

IV. CONFLICTS OF INTEREST

A. You are responsible for familiarizing yourself with the various laws governing your conduct as a member of the Board. These laws are: (1) The Health & Safety Code provisions governing CalHFA Board Members; (2) the Political Reform Act; (3) Government Code section 1090; (4) CalHFA Conflict of Interests Regulations; and (5) the Fair Political Practices Commission Regulations, copies of which have been included in your Board Binder. You should review these statutes for a complete description of the prohibitions and feel free to discuss any questions you might have with the General Counsel of the Agency. The significant provisions have been summarized below:

1. Under the Political Reform Act and Health and Safety Code section 50904, you must **disclose** any financial interest that you have in matters before the Board and not attempt to influence, participate in deliberations concerning, or vote as to that matter. Violation of this provision subjects the member to disqualification from office and failure to disclose a financial interest in a matter before the Board is a misdemeanor under Section 91000 of the Government Code.

2. Under Health and Safety Code section 50905 a Board Member **cannot hold legal** title to or have any financial interest in real property purchased by the Agency or sold to a housing sponsor for a housing development to be financed by the Agency. Violation is a conflict of interest which would subject the Board Member to disqualification and removal from office. Any other matter before the Board for a decision must be disclosed on the record and the Board member must not participate in deliberations.

   (a) Any Board member who is uncertain of whether they have a conflict of interest needs to inform the Agency sufficiently in advance of the Board meeting so that Agency counsel can

determine whether and how the Board can act at the meeting.

3. You must **report** on your annual FPPC Statement of Economic Interests, any interest in real property located within the State of California and any investments in business entities that are housing sponsors financed by CalHFA.

4. Board Members **cannot accept** gifts from any single entity identified in subparagraphs 5(a)-(b) (see more rigid rules governing lobbyist below) having a greater value than $500 during a calendar year (Gov. Code, § 89503; 2 CCR § 18940.2), and must **report** on your Statement of Economic Interests any gifts received from a single entity (identified in paragraph 5(a)-(b), below, having a value greater than $50 (in the aggregate), from a single donor, during a calendar year (Gov. Code, § 89503, subd. (a)(1)). Feel free to consult with the General Counsel if you have any questions.

5. You must **report** on your annual FPPC Statement of Economic Interests, any investments in any business entity defined as:

   (a) A housing sponsor, limited-dividend housing sponsor, or qualified mortgage lender doing business with the Agency.

   (b) Any insurance company, title company, escrow company, real estate firm, brokerage firm, building or construction contractor or subcontractor, information technology company, law firm financial services company, or contracting entity which provides or plans to provide work or services to the Agency.

6. You must also **report** on your annual Statement of Economic Interests, any investments or business positions in, or income from, any business entity which, within the last two years, has contracted with the Agency or with the State of California to provide services, supplies, materials, machinery or equipment to the Agency.

7. A Board Member **cannot accept** a gift or gifts from a registered **Lobbyist** having a value greater than $10 during a calendar month (Gov. Code, § 86203).

8. Honoraria, defined as any payment made in consideration for any speech given, article published, or attendance at any public or private conference, convention, or gathering is **prohibited** if obtained from one of the entities mentioned in subparagraph 5(a)-(b), above.

9. Travel payments constituting a gift may have to be reported and subject to the gift limit.

10. Certain travel payments that are not reportable as a gift, may still be reportable in the FPPC Statement of Economic Interests as income.

11. You are **prohibited** from using your official position to influence a state governmental decision in which you have a financial interest, where the effect of the decision has an effect on your interest that is different from the public in general.

    (a) Participating in a governmental decision includes voting, appointing, negotiating, advising, recommending and contracting.

    (b) Influencing a governmental decision includes contacting, appearing before, or attempting to influence any member, officer, employee or consultant of the Agency. Use of official stationery could also be construed as an attempt to influence a governmental decision.

12. You are **prohibited** from receiving or soliciting campaign contributions of more than $250 during a 12-month period from anyone doing business with the Agency (Gov. Code, § 84308, subd. (c)).

13. You are **prohibited** from representing others before the Agency for compensation for the purpose of influencing awards of contracts or loans.

14. You are **prohibited** from influencing an Agency decision related to:

    1. A business entity in which you have an investment of $2,000 or more in which you are a director, officer, partner, trustee, employee, or manager (Gov. Code, § 87103, subds. (a), (d)); -OR-
    2. Real property in which you have an interest of $2,000 or more, including leaseholds (Gov. Code, § 87103, subd. (b); -OR-
    3. An individual or an entity from whom you have received income or promised income aggregating to $500 or more in the previous 12 months, including any community property interest in the income of your spouse or registered domestic partner (Gov. Code, § 87103, subd. (e); 2 CCR § 18941).

15. You are **prohibited** from engaging in any activity that would be incompatible with the Agency's business.

16. You may not be **compensated** for communicating with the Agency for **one year** after your membership on the Board terminates in an attempt to influence the Agency to enter into a contract or loan with another person, firm or entity.

17. You are permanently **prohibited** from being **compensated** for representing or advising another person regarding a **specific** loan, project or bond issue that you participated in approving as a Board Member.

CalHFA BOARD OF DIRECTORS Orientation

GETTING STARTED CHECKLIST

☐	We encourage Board members to sign-up for CalHFA's Enews to help stay current on CalHFA activity. You can sign-up by clicking on the link below: CalHFA Enews
☐	CalHFA's website has a page dedicated to our Board of Directors. We request that you submit a picture and bio. We may adjust it to fit our standard content format and will post it on our webpage once you have taken your oath. If you prefer, we can prepare a bio on your behalf and publish it after you've reviewed it for accuracy. Be sure to send us information on your background. You can see our current Board of Directors page by clicking on the link below: CalHFA Board of Directors
☐	Ex-officio Board members may provide CalHFA with a ***Delegation of Authority*** letter authorizing the staff you would like to be able to attend the Board meetings on your behalf.
☐	Please provide CalHFA with the following contact info: • Email • Mailing Address • Phone number (office and mobile) • Administrative Assistant name, email, and phone number • Delegates name, email, and phone number
☐	All Board members are required to submit a Form 700 to CalHFA.
☐	iPads's are available for Board members to use in conducting CalHFA business and viewing Board materials. If you are interested in having one assigned to you, please let us know and we will prepare the proper authorizations.
☐	CalHFA will provide, prepare, and submit Travel Expense Claim (TEC) forms for Board members. To be reimbursed properly, we will need you to save all receipts for travel expense and abide by the State and CalHFA travel policies. If Board members choose to prepare their own TECs, please send completed forms with receipts to Courtney Pond at cpond@calhfa.ca.gov for submission.
☐	Ex-officio Board members will be responsible for submitting their TECs through their agencies for reimbursement, not CalHFA.
☐	CalHFA will assign new members with a CalHFA email to use for all CalHFA business. We ask that you check this email regularly for new messages. This only applies to members without a state email address assigned.
☐	Personnel documents required by CalHFA will be provided to Board members and include: • Oath of Allegiance and Declaration of Permission to Work for Persons Employed by the State of California • Employee Action Request • Designation of Person Authorized to Receive Warrants • Race Ethnicity Questionnaire
☐	Board members per diem payments will be processed automatically by CalHFA staff and mailed to the address on file within 2 weeks of their attendance at a Board meeting.
☐	Each Board member is required to participate in the following mandated training within six months of assuming office and every two years thereafter: • Ethics Training • Harassment Prevention Training CalHFA's Training Officer, in coordination with the Board's Secretary, shall maintain training records for each member

GETTING STARTED CHECKLIST

	and shall be responsible for scheduling the training.
☐	To further enhance their knowledge and expertise, Board members are encouraged to request to participate in the following training activities • The National Conference of State Housing Boards Annual Board Training • The National Conference of State Housing Agencies (NCSHA) Legislation Conference • The NCSHA Annual Conference

BOARD OF DIRECTORS *Orientation*

CALIFORNIA HOUSING FINANCE AGENCY POLICIES AND PROCEDURES

Subject: Board of Directors Orientation and Training

Purpose: The California Housing Finance Agency Board of Directors is committed to ensuring its members are provided with an orientation and ongoing training necessary to carry out their governance responsibilities.

General Information:

California Housing Finance Agency (CalHFA) has established an orientation plan and ongoing training activities to develop its Board of Directors during their tenure as outlined in this policy.

CalHFA may pay for training for all Board members but will only reimburse travel, lodging and meal expenses for those Board members who are eligible for per diem pursuant to Health & Safety Code Section 50909. Ex officio members (or their delegates) must seek reimbursement for travel, lodging and meal expenses from their department.

Orientation: CalHFA's Executive Staff shall provide new members an orientation within the first three months of joining the CalHFA Board of Directors to assist them in understanding the history and operations of CalHFA, the Board's function, and the member's responsibilities regarding conflicts of interest and open meetings laws.

Mandated Training: Each member of the CalHFA Board of Directors shall participate in the following mandated training within six months of assuming office and every two years thereafter:

- Ethics Training
- Harassment Prevention Training

CalHFA's training officer, in coordination with the Board's Secretary, shall maintain training records for each member and shall be responsible for scheduling mandatory training.

Discretionary Training Activities:

To enhance the knowledge and expertise of the members of the CalHFA Board of Directors, members are encouraged to submit their request to participate in the following training activities (see Steps for Requesting Training Activities below):

- The National Conference of State Housing Boards Annual Board Training
- The National Conference of State Housing Agencies (NCSHA) Legislation Conference • The NCSHA Annual Conference

Participation in the above referenced conferences is subject to available funds.

To provide equal opportunity to board members during their tenure, attendance at the NCSHA sponsored conferences will be rotated amongst the members.

Steps for Requesting Training Activities:

The members of the CalHFA Board of Directors interested in participating in the discretionary training activities shall obtain pre-approval by requesting CalHFA staff to complete and submit a Board Member Training Request Form to the Executive Director (ED), who shall ensure there are sufficient funds in the Board of Directors' travel and training budget. The ED's office will forward the request to the Board Chairperson for final decision and approval. The approved Board Member Training Request Form will be sent to the training officer for registration (see Registration below). Board Members are not required to sign this form; a verbal or written approval is enough for CalHFA staff to type their names in the signature area of the form.

Out-of-State Travel:

When the above referenced training activities are out of state, the members of the CalHFA Board of Directors must also request CalHFA staff to complete and submit the Out-of-State Travel Request Form (see the Out-of-State Travel Policy for further direction) with the Board Member Training Request Form (see Steps for Requesting Training Activities above). Board members are not required to sign this form.

Registration:

Registration for all training is the responsibility of the training officer. The members of the CalHFA Board of Directors will be notified about their registration details, including a PDF copy of the approved Board Member Training Request Form, by email (using Outlook meeting invitation).

Cancellation:

Board members are asked to be aware of the training vendor's "Cancellation Policy" and to report any cancellations or changes to the Executive Director's Office, the Board Secretary, and training officer immediately so that another Board Member may be substituted, or other arrangements can be made, if appropriate. If registration is not cancelled within the specified timeframe, CalHFA will be responsible for payment due to non-attendance.

Reimbursement:

Those members of the CalHFA Board of Directors who are eligible to be reimbursed for travel associated with the above referenced activities must submit a completed Travel Expense Claim (see the Travel Expense Claim Policy for further directions) and shall be reimbursed as outlined in the CalHR Travel Rules. Ex officio members must seek reimbursement from their departments per their policy.

Authorities:

Government Code Section 12950.1(a); Sections: 11146 – 11146.4

HEALTH AND SAFETY CODE SECTION 50900-50916

50900.

The California Housing Finance Agency is hereby continued in existence in the Department of Housing and Community Development. The agency constitutes a public instrumentality and a political subdivision of the state, and the exercise by the agency of the powers conferred by this division shall be deemed and held to be the performance of an essential public function.

(Amended by Stats. 2013, Ch. 352, Sec. 379. (AB 1317) Effective September 26, 2013. Operative July 1, 2013, by Sec. 543 of Ch. 352.)

50901.

The agency shall be administered by a board of directors consisting of 13 voting members, including a chairperson selected by the Governor from among his or her appointees. The Treasurer; the Secretary of Business, Consumer Services, and Housing; the Director of Housing and Community Development; and the Secretary of Veterans Affairs, or their designees, shall be members, in addition to seven members appointed by the Governor, one member appointed by the Speaker of the Assembly, and one member appointed by the Senate Committee on Rules. The Director of Finance, the Director of Planning and Research, and the executive director of the agency shall serve as nonvoting ex officio members of the board.

(Amended (as amended by Stats. 2012, Ch. 147, Sec. 21) by Stats. 2013, Ch. 82, Sec. 1. (AB 984) Effective August 12, 2013. Operative January 1, 2014, pursuant to Sec. 7 of Ch. 82.)

50902.

(a) Appointed members of the board shall be able persons broadly reflective of the economic, cultural, and social diversity of the state, including ethnic minorities and women. However, it is not intended that formulas or specific ratios be applied in order to achieve that diversity.

(b) The Governor shall select four of his or her seven appointees from among the following categories:

(1) an elected official of a city or county engaged in the planning or implementation of a housing, housing-assistance, or housing-rehabilitation program; (2) a person experienced in residential real estate in the savings and loan, mortgage banking, or commercial banking industry; (3) a person experienced as a builder of residential housing; (4) a person experienced in organized labor in the residential construction industry; (5) a person experienced in the management of rental or cooperative housing occupied by lower income households; (6) a person experienced in manufactured housing finance and development; and (7) a person representing the public. Not more than one person from each category may serve on the board at any one time, except that two members may be appointed by the Governor to represent the public.

(c) The Governor shall also appoint two members who are residents of rental or cooperative housing financed by the agency or who are persons experienced in counseling, assisting, or representing tenants.

(d) At least one of the members appointed by the Governor shall be a resident of a rural or nonmetropolitan area.

(e) At least one of the members appointed by the Governor shall have specific knowledge of bonds and related financial instruments, interest rate swaps, and risk management.

(f) The Senate Committee on Rules and the Speaker of the Assembly shall each appoint a person representing the public.

The term of members of the board shall be six years. Any person appointed to fill a vacancy on the board shall serve only for the remainder of the unexpired term. Members of the board shall, subject to continued qualification, be eligible for reappointment. If a member of the board ceases to meet the qualifications specified in this section, the membership of that person on the board shall be terminated.

(Amended by Stats. 2013, Ch. 82, Sec. 2. (AB 984) Effective August 12, 2013. Operative January 1, 2014, pursuant to Sec. 7 of Ch. 82.)

50903.

All members of the board appointed by the Governor shall be confirmed by the Senate.

(Added by Stats. 1977, Ch. 610.)

50904.

The representation of varied interest groups on the board shall be deemed essential to obtain information for the development of policy and decisions of the board. Notwithstanding Section 1090 of the Government Code, it shall not be a conflict of interest for an official of any local public entity or a resident of any affordable housing, or a director, officer, stockholder, or employee of any savings and loan institution, investment banking firm, brokerage firm, commercial bank or trust company, architectural firm, insurance company, labor union, or any other person, association, or corporation to serve as a member of the board. If any board member has a financial interest in any matter before the board for a decision, that interest shall be disclosed as a matter of official public record. The board member shall not attempt to influence, participate in deliberations concerning, or vote as to that matter.

Violation of this section constitutes grounds for disqualification from office as a board member. Violation of the disclosure requirements of this section constitutes a misdemeanor under Section 91000 of the Government Code.

(Amended by Stats. 2011, Ch. 408, Sec. 1. (AB 1222) Effective January 1, 2012.)

50905.

(a) An officer or employee of the agency shall not be employed by, hold any paid official relation to, or have any financial interest in, any housing sponsor or any affordable housing financed or assisted under this part, provided that this prohibition shall not apply to a member of the board of directors who is not an employee of the agency. Real property to which a member of the board or employee of the agency holds legal title or in which the person has any financial interest shall not be purchased by the agency or sold by the member of the board or employee of the agency to a housing sponsor for affordable housing to be financed under this part.

Any violation of this section shall be a conflict of interest that shall be grounds for disqualification of the member from the board or employee of the agency from his or her employment with the board or agency.

(b) Except as provided by subdivision (c), the following actions shall be voidable in the discretion of the agency:

(1) Any purchase by the agency of real property in which a member of the board or employee of the agency has legal title or a financial interest.

(2) Any commitment by the agency to provide financial assistance to a housing sponsor in which a member of the board or employee of the agency is employed, holds any official relation, or has any financial interest.

(3) Any commitment by the agency to provide financial assistance to a housing sponsor to which real property has been or is transferred for affordable housing to be financed under this part, if a member of the board or employee of the agency has or has had legal title or any financial interest in the real property.

(c) Any commitment by the agency to provide financial assistance under the circumstances specified in paragraph (2) or (3) of subdivision (b) shall not be voidable following release of the funds.

(d) Notwithstanding any other provision of this section and Section 50904, any conflict of interest by a member of the board or employee of the agency shall not affect the validity of any bonds or insurance issued pursuant to this division.

(e) Notwithstanding any other provision of this section, an agency employee or board member may, if not acting as an investor and if otherwise eligible, participate in owner-occupied single-family financing and insurance programs operated by the agency.

(Amended by Stats. 2011, Ch. 408, Sec. 2. (AB 1222) Effective January 1, 2012.)

50906.

Board members shall be removable solely for cause.

(Added by Stats. 1977, Ch. 610.)

50907.

The Governor shall appoint a chairperson from among members of the board, who, when present, shall preside at meetings of the board. The term of the chairperson shall be five years, but shall terminate earlier upon expiration of the chairperson's term under Section 50902 without reappointment to the board.

(Amended by Stats. 1987, Ch. 1034, Sec. 14.)

50908.

The Governor shall, subject to confirmation by the Senate, appoint an executive director of the agency, who shall, subject solely to supervision by the board, administer and direct the day-to-day operations of the agency. The term of office of the executive director is five years. Except as provided in this part, the board shall from time to time determine the total number of authorized employees within the agency and shall determine the salaries of those employees of the agency whose salaries are not paid from moneys appropriated to the agency from the General Fund.

(Amended by Stats. 1987, Ch. 1034, Sec. 15. Note: Conditional amendment by Stats. 1994, Ch. 94, was repealed by Stats. 1997, Ch. 580.)

50909.

(a) Notwithstanding Sections 19816 and 19825 of the Government Code, the compensation of key exempt management, including the executive director, the chief deputy director, the general counsel, the director of financing, the director of homeownership programs, the director of multifamily programs, the director of enterprise risk management and compliance, and the risk manager, shall be established by the board in the agency's annual budget, in amounts which are reasonably necessary, in the discretion of the board, to attract and hold a person of superior qualifications.

(b) (1) To determine the compensation for the positions described in this section, the board shall cause to be conducted, through the use of independent outside advisors, salary surveys of both of the following:

(A) Other state and local housing finance agencies that are most comparable to CalHFA.

(B) Other relevant labor pools.

(2) The salaries so set by the board shall not exceed the highest comparable salary for a position of that type, as determined by the survey.

(c) The Department of Human Resources shall review the methodology used in these salary surveys.

(d) Members of the board shall not receive a salary but shall be entitled to a per diem allowance of one hundred dollars ($100) for each day's attendance at a meeting of the board or a meeting of a committee of the board, not to exceed three hundred dollars ($300) in any month, and reimbursement for expenses incurred in the performance of their duties under this part, including travel and other necessary expenses.

(Amended by Stats. 2018, Ch. 661, Sec. 1. (SB 912) Effective January 1, 2019.)

50910.

The executive director may from time to time employ technical experts and other employees as may, in his or her judgment, be necessary for the conduct of the business of the agency.

(Amended by Stats. 1993, Ch. 115, Sec. 1. Effective July 15, 1993.)

50911.

(a) Notwithstanding Sections 11042 and 11043 of the Government Code, the executive director may employ as general counsel for the agency an attorney at law licensed in this state. The general counsel, or in his or her absence, the general counsel's designee, shall advise the board, the chairperson, and the executive director, when so requested, with regard to all matters in connection with the powers and duties of the agency and the board members and officers thereof. The general counsel shall serve as secretary to the board and shall perform all duties and services as general counsel to the agency that the agency may require of that person.

(b) Except as provided in Section 11040 of the Government Code, the Attorney General shall represent and appear for the people of the state and the agency in all court proceedings involving any question under this division or any order or act of the agency. However, the agency may also employ private counsel to assist in any court proceeding.

(c) Notwithstanding Sections 11042 and 11043 of the Government Code, the executive director may appoint as bond counsel for the agency an attorney or attorneys. Nothing in this section or any other provision of law shall preclude the appointment of more than one attorney to serve as bond counsel. However, at all times at least one attorney shall be licensed to practice law in this state. If the agency appoints more than one bond counsel for a bond issue, the combined fees paid to all bond counsel shall not exceed those fees that would have been paid had only one bond counsel been appointed.

(d) Under the authority of this section, the executive director may appoint or retain an attorney or attorneys to undertake other appropriate legal studies and assignments not in conflict with this section.

(Amended by Stats. 2005, Ch. 338, Sec. 1. Effective January 1, 2006.)

50912.

There shall be within the agency a director of financing appointed by the Governor and serving at the pleasure of the executive director of the agency.

The director of financing shall have responsibility for the financial operations of the agency and shall perform such other duties as may be required by the executive director.

(Amended by Stats. 1979, Ch. 1115.)

50912.5.

There shall be within the agency a director of enterprise risk management and compliance appointed by the Governor and serving at the pleasure of the executive director of the agency. The director of enterprise risk management and compliance shall assist in the implementation of processes, tools, and systems to identify, assess, measure, manage, monitor, and mitigate risks related to the development of new programs or changes to existing law or regulations that may result in new or increased risk to the agency, as well as other duties as may be required by the executive director.

(Added by Stats. 2016, Ch. 32, Sec. 73. (SB 837) Effective June 27, 2016.)

50913.

For its activities under this division, the executive director shall prepare a preliminary budget on or before December 1 of each year for the ensuing fiscal year to be reviewed by the Secretary of Business, Consumer Services, and Housing, the Director of Finance, and the Joint Legislative Budget Committee.

(Amended by Stats. 2012, Ch. 147, Sec. 22. (SB 1039) Effective January 1, 2013. Operative July 1, 2013, by Sec. 23 of Ch. 147.)

50914.

(a) The board shall authorize any sale of obligations or securities or other debt obligations and shall approve other major contractual agreements. Any other contractual agreements or debt obligations may be approved by the executive director pursuant to regulations of the board.

(b) Actions of the board may be taken only by a concurrence of a majority of the entire membership thereof, excepting nonvoting ex officio members.

(Amended by Stats. 1979, Ch. 1115.)

50915.

The principal offices of the agency shall be located in the City of Sacramento.

(Added by Stats. 1977, Ch. 610.)

50916.

All meetings of the board and of all committees of the board including those committees whose membership constitutes less than a quorum of the board shall be open and public and all persons shall be permitted to attend and address the board or its committees, except when the meetings are held as executive sessions as authorized by Section 11126 of the Government Code.

(Amended by Stats. 1987, Ch. 1034, Sec. 18.)

Title 25. Housing and Community Development

Division 2. California Housing Finance Agency

Chapter 4. Procedures of Board of Directors

Article 1. Board Action

25 CCR § 13300

13300. Quorum.

A quorum shall consist of fifty-one percent (51%) of voting Board members then in office.

Note: Authority cited: Section 51050(e), Health and Safety Code. Reference: Sections 50901 and 50916, Health and Safety Code.

13301. Vote Requirement.

No action shall be taken by the Board of Directors without the affirmative vote of fifty-one percent (51%) of the voting Board members then in office at the duly called Board meeting.

Note: Authority cited: Section 51050(e), Health and Safety Code. Reference: Sections 50901 and 50916, Health and Safety Code.

13302. Approval of Contractual Agreements and Debt Obligations.

(a) The Board of Directors shall authorize any sale of obligations or securities or other debt obligations and shall approve other major contractual agreements. Any other contractual agreements or debt obligations may be approved by the Executive Director pursuant to this section. The Board of Directors may also delegate any contracting authority to the Executive Director on terms provided by Board resolution.

(b) “Major contractual obligations” shall mean operating agreements or obligations which in any fiscal year exceed, or are reasonably expected to exceed the higher of $1,000,000, or such other sum as the Board of Directors may establish from time to time by resolution. Obligations which in any fiscal year do not exceed, or are not reasonably expected to exceed the amount established above may be approved by the Executive Director. The Board of Directors may approve any major contractual obligation either by resolution; or by approving the Agency's annual operating budget, provided that any such major contractual obligation is set forth in a line item in such budget. If the Executive Director determines that there is an emergency, and that such emergency requires the Agency to enter into a major contractual obligation on an expedited basis, the Executive Director may approve the obligation, but shall bring the

obligation to the Board for review and ratification at the next regularly scheduled Board meeting.

(c) The Executive Director may delegate his/her authority to approve contractual agreements or debt obligations to any employee of the Agency. Except in the event of extraordinary circumstances, any such delegation of authority shall be in writing and a copy filed with the General Counsel prior to the exercise of such authority. Under extraordinary circumstances, the Executive Director may delegate orally his/her authority to approve contractual agreements or debt obligations. In delegating his/her authority to approve contractual agreements or debt obligations the Executive Director may impose limitations and/or conditions on such authority and may permit further delegation of such authority to any other employee of the Agency.

(d) "Extraordinary circumstances," as used in subdivision (c) above, means such circumstances as the Executive Director shall determine are sufficient to justify an oral delegation of his/her authority to approve contractual agreements or debt obligations. A determination by the Executive Director that extraordinary circumstances exist may be validly communicated, orally or in writing, to any employee of the Agency.

(e) The Executive Director may ratify the purported approval by any employee of the Agency of any contractual agreements or debt obligations which would have been within the authority of the Executive Director to approve at the time of such purported approval.

(f) No sale of obligations or securities or debt obligations or contractual agreements shall be approved unless and until they have been approved by the General Counsel as to legal sufficiency. The General Counsel shall determine which contractual agreements or debt obligations require Board of Director approval as provided herein and which do not. The General Counsel may issue opinions which interpret this section and any employee of the Agency may act in reliance upon such opinion. The General Counsel may delegate his/her authority under this section to other attorneys employed by the Agency.

Note: Authority cited: Section 51050(e), Health and Safety Code. Reference: Sections 7 and 50914, Health and Safety Code.

GOVERNMENT CODE
SECTION 87400-87407; 87450;
91000-91000.5; 91013-91013.5

87400.
Unless the contrary is stated or clearly appears from the context, the definitions set forth in this section shall govern the interpretation of this article.

(a) "State administrative agency" means every state office, department, division, bureau, board and commission, but does not include the Legislature, the courts or any agency in the judicial branch of government.

(b) "State administrative official" means every member, officer, employee or consultant of a state administrative agency who as part of his or her official responsibilities engages in any judicial, quasi-judicial or other proceeding in other than a purely clerical, secretarial or ministerial capacity.

(c) "Judicial, quasi-judicial or other proceeding" means any proceeding, application, request for a ruling or other determination, contract, claim, controversy, investigation, charge, accusation, arrest or other particular matter involving a specific party or parties in any court or state administrative agency, including but not limited to any proceeding governed by Chapter 5 (commencing with Section 11500) of Division 3 of Title 2 of the Government Code.

(d) "Participated" means to have taken part personally and substantially through decision, approval, disapproval, formal written recommendation, rendering advice on a substantial basis, investigation or use of confidential information as an officer or employee, but excluding approval, disapproval or rendering of legal advisory opinions to departmental or agency staff which do not involve a specific party or parties.
(Added by Stats. 1980, Ch. 66.)

87401.
No former state administrative official, after the termination of his or her employment or term of office, shall for compensation act as agent or attorney for, or otherwise represent, any other person (other than the State of California) before any court or state administrative agency or any officer or employee thereof by making any formal or informal appearance, or by making any oral or written communication with the intent to influence, in connection with any judicial, quasi-judicial or other proceeding if both of the following apply:

(a) The State of California is a party or has a direct and substantial interest.

(b) The proceeding is one in which the former state administrative official participated.

(Amended by Stats. 1985, Ch. 775, Sec. 5.)

87402.
No former state administrative official, after the termination of his or her employment or term of office shall for compensation aid, advise, counsel, consult or assist in representing any other person (except the State of California) in any proceeding in which the official would be prohibited from appearing under Section 87401.
(Added by Stats. 1980, Ch. 66.)

87403.
The prohibitions contained in Sections 87401 and 87402 shall not apply:

(a) To prevent a former state administrative official from making or providing a statement, which is based on the former state administrative official's own special knowledge in the particular area that is the subject of the statement, provided that no compensation is thereby received other than that regularly provided for by law or regulation for witnesses; or

(b) To communications made solely for the purpose of furnishing information by a former state administrative official if the court or state administrative agency to which the communication is directed makes findings in writing that:

(1) The former state administrative official has outstanding and otherwise unavailable qualifications;

(2) The former state administrative official is acting with respect to a particular matter which requires such qualifications; and

(3) The public interest would be served by the participation of the former state administrative official; or

(c) With respect to appearances or communications in a proceeding in which a court or state administrative agency has issued a final order, decree, decision or judgment but has retained jurisdiction if the state administrative agency of former employment gives its consent by determining that:

(1) At least five years have elapsed since the termination of the former state administrative official's employment or term of office; and

(2) The public interest would not be harmed.
(Added by Stats. 1980, Ch. 66.)

87404.

Upon the petition of any interested person or party, the court or the presiding or other officer, including but not limited to a hearing officer serving pursuant to Section 11512 of the Government Code, in any judicial, quasi-judicial or other proceeding, including but not limited to any proceeding pursuant to Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code may, after notice and an opportunity for a hearing, exclude any person found to be in violation of this article from further participation, or from assisting or counseling any other participant, in the proceeding then pending before such court or presiding or other officer.
(Added by Stats. 1980, Ch. 66.)

87405.
The requirements imposed by this article shall not apply to any person who left government service prior to the effective date of this article except that any such person who returns to government service on or after the effective date of this article shall thereafter be covered thereby.
(Added by Stats. 1980, Ch. 66.)

87406.
(a) This section shall be known, and may be cited, as the Milton Marks Postgovernment Employment Restrictions Act of 1990.

(b) (1) Except as provided in paragraph (2), a Member of the Legislature, for a period of one year after leaving office, shall not, for compensation, act as agent or attorney for, or otherwise represent, any other person by making any formal or informal appearance, or by making any oral or written communication, before the Legislature, any committee or subcommittee thereof, any present Member of the Legislature, or any officer or employee thereof, if the appearance or communication is made for the purpose of influencing legislative action.

(2) A Member of the Legislature who resigns from office, for a period commencing with the effective date of the resignation and concluding one year after the adjournment sine die of the session in which the resignation occurred, shall not, for compensation, act as agent or attorney for, or otherwise represent, any other person by making any formal or informal appearance, or by making any oral or written communication, before the Legislature, any committee or subcommittee thereof, any present Member of the Legislature, or any officer or employee thereof, if the appearance or communication is made for the purpose of influencing legislative action.

(c) An elected state officer, other than a Member of the Legislature, for a period of one year after leaving office, shall not, for compensation, act as agent or attorney for, or otherwise represent, any other person by making any formal or informal appearance, or by making any oral or written communication, before any state administrative agency, or any officer or employee thereof, if the appearance or communication is for the purpose of influencing

administrative action, or influencing any action or proceeding involving the issuance, amendment, awarding, or revocation of a permit, license, grant, or contract, or the sale or purchase of goods or property. For purposes of this subdivision, an appearance before a "state administrative agency" does not include an appearance in a court of law, before an administrative law judge, or before the Workers' Compensation Appeals Board.

(d) (1) A designated employee of a state administrative agency, any officer, employee, or consultant of a state administrative agency who holds a position that entails the making, or participation in the making, of decisions that may foreseeably have a material effect on any financial interest, and a member of a state administrative agency, for a period of one year after leaving office or employment, shall not, for compensation, act as agent or attorney for, or otherwise represent, any other person, by making any formal or informal appearance, or by making any oral or written communication, before any state administrative agency, or officer or employee thereof, for which he or she worked or represented during the 12 months before leaving office or employment, if the appearance or communication is made for the purpose of influencing administrative or legislative action, or influencing any action or proceeding involving the issuance, amendment, awarding, or revocation of a permit, license, grant, or contract, or the sale or purchase of goods or property. For purposes of this paragraph, an appearance before a state administrative agency does not include an appearance in a court of law, before an administrative law judge, or before the Workers' Compensation Appeals Board. The prohibition of this paragraph only applies to designated employees employed by a state administrative agency on or after January 7, 1991.

(2) For purposes of paragraph (1), a state administrative agency of a designated employee of the Governor's office includes any state administrative agency subject to the direction and control of the Governor.

(e) The prohibitions contained in subdivisions (b), (c), and (d) do not apply to any individual subject to this section who is or becomes either of the following:

(1) An officer or employee of another state agency, board, or commission if the appearance or communication is for the purpose of influencing legislative or administrative action on behalf of the state agency, board, or commission.

(2) An official holding an elective office of a local government agency if the appearance or communication is for the purpose of influencing legislative or administrative action on behalf of the local government agency.

(Amended by Stats. 2017, Ch. 800, Sec. 1. (AB 1620) Effective January 1, 2018.)

87406.1.

(a) For purposes of this section, "district" means an air pollution control district or air quality management district and "district board" means the governing body of an air pollution control district or an air quality management district.

(b) No former member of a district board, and no former officer or employee of a district who held a position which entailed the making, or participation in the making, of decisions which may foreseeably have a material effect on any financial interest, shall, for a period of one year after leaving that office or employment, act as agent or attorney for, or otherwise represent, for compensation, any other person, by making any formal or informal appearance before, or by making any oral or written communication to, that district board, or any committee, subcommittee, or present member of that district board, or any officer or employee of the district, if the appearance or communication is made for the purpose of influencing regulatory action.

(c) Subdivision (b) shall not apply to any individual who is, at the time of the appearance or communication, a board member, officer, or employee of another district or an employee or representative of a public agency.

(d) This section applies to members and former members of district hearing boards.
(Added by Stats. 1994, Ch. 747, Sec. 1. Effective January 1, 1995.)

87406.3.
(a) A local elected official, chief administrative officer of a county, city manager, or general manager or chief administrator of a special district who held a position with a local government agency as defined in Section 82041 shall not, for a period of one year after leaving that office or employment, act as agent or attorney for, or otherwise represent, for compensation, any other person, by making any formal or informal appearance before, or by making any oral or written communication to, that local government agency, or any committee, subcommittee, or present member of that local government agency, or any officer or employee of the local government agency, if the appearance or communication is made for the purpose of influencing administrative or legislative action, or influencing any action or proceeding involving the issuance, amendment, awarding, or revocation of a permit, license, grant, or contract, or the sale or purchase of goods or property.

(b) (1) Subdivision (a) does not apply to an individual who is, at the time of the appearance or communication, a board member, officer, or employee of another local government agency or an employee or representative of a public agency and is appearing or communicating on behalf of that agency.

(2) Subdivision (a) applies to an individual who is, at the time of the appearance or communication, an independent contractor of a local government agency or a public agency and is appearing or communicating on behalf of that agency.

(c) This section does not preclude a local government agency from adopting an ordinance or policy that restricts the appearance of a former local official before that local government agency if that ordinance or policy is more restrictive than subdivision (a).

(d) Notwithstanding Sections 82002 and 82037, the following definitions apply for purposes of this section only:

(1) “Administrative action” means the proposal, drafting, development, consideration, amendment, enactment, or defeat by any local government agency of any matter, including any rule, regulation, or other action in any regulatory proceeding, whether quasi-legislative or quasi-judicial. Administrative action does not include any action that is solely ministerial.

(2) “Legislative action” means the drafting, introduction, modification, enactment, defeat, approval, or veto of any ordinance, amendment, resolution, report, nomination, or other matter by the legislative body of a local government agency or by any committee or subcommittee thereof, or by a member or employee of the legislative body of the local government agency acting in his or her official capacity.
(Amended by Stats. 2017, Ch. 196, Sec. 1. (AB 551) Effective January 1, 2018.)

87407.
No public official shall make, participate in making, or use his or her official position to influence, any governmental decision directly relating to any person with whom he or she is negotiating, or has any arrangement concerning, prospective employment.

(Amended by Stats. 2003, Ch. 778, Sec. 1. Effective January 1, 2004.)

87450.
(a) In addition to the provisions of Article 1 (commencing with Section 87100), no state administrative official shall make, participate in making, or use his or her official position to influence any governmental decision directly relating to any contract where the state administrative official knows or has reason to know that any party to the contract is a person with whom the state administrative official, or any member of his or her immediate family, has engaged in any business transaction or transactions on terms not available to members of the public, regarding any investment or interest in real property, or the rendering of goods or services totaling in value one thousand dollars ($1,000) or more within 12 months prior to the time the official action is to be performed.

(b) As used in subdivision (a), “state administrative official” has the same meaning as defined in Section 87400.

(Added by Stats. 1986, Ch. 653, Sec. 1.)

91000.

(a) Any person who knowingly or willfully violates any provision of this title is guilty of a misdemeanor.

(b) In addition to other penalties provided by law, a fine of up to the greater of ten thousand dollars ($10,000) or three times the amount the person failed to report properly or unlawfully contributed, expended, gave or received may be imposed upon conviction for each violation.

(c) Prosecution for violation of this title must be commenced within four years after the date on which the violation occurred.
(Repealed and added by Stats. 2000, Ch. 102, Sec. 73. Approved in Proposition 34 at the November 7, 2000, election. Operative January 1, 2001, by Sec. 83 of Ch. 102.)

91000.5.

No administrative action brought pursuant to Chapter 3 (commencing with Section 83100) alleging a violation of any of the provisions of this title shall be commenced more than five years after the date on which the violation occurred.
(a) The service of the probable cause hearing notice, as required by Section 83115.5, upon the person alleged to have violated this title shall constitute the commencement of the administrative action.

(b) If the person alleged to have violated this title engages in the fraudulent concealment of his or her acts or identity, the five-year period shall be tolled for the period of the concealment. For purposes of this subdivision, “fraudulent concealment” means the person knows of material facts related to his or her duties under this title and knowingly conceals them in performing or omitting to perform those duties, for the purpose of defrauding the public of information to which it is entitled under this title.

(c) If, upon being ordered by a superior court to produce any documents sought by a subpoena in any administrative proceeding under Chapter 3 (commencing with Section 83100), the person alleged to have violated this title fails to produce documents in response to the order by the date ordered to comply therewith, the five-year period shall be tolled for the period of the delay from the date of filing of the motion to compel until the date the documents are produced.
(Added by Stats. 1997, Ch. 179, Sec. 1. Effective January 1, 1998.)

91013.
(a) If any person files an original statement or report after any deadline imposed by this act, he or she shall, in addition to any other penalties or remedies established by this act, be liable in the amount of ten dollars ($10) per day after the deadline until the statement or report is filed, to the officer with whom the statement or report is required to be filed. Liability need not be enforced by the filing officer if on an impartial basis he or she determines that the late filing

was not willful and that enforcement of the liability will not further the purposes of the act, except that no liability shall be waived if a statement or report is not filed within 30 days for a statement of economic interest, other than a candidate's statement filed pursuant to Section 87201, five days for a campaign statement required to be filed 12 days before an election, and 10 days for all other statements or reports, after the filing officer has sent specific written notice of the filing requirement.

(b) If any person files a copy of a statement or report after any deadline imposed by this act, he or she shall, in addition to any other penalties or remedies established by this chapter, be liable in the amount of ten dollars ($10) per day, starting 10 days, or five days in the case of a campaign statement required to be filed 12 days before an election, after the officer has sent specific written notice of the filing requirement and until the statement is filed.

(c) The officer shall deposit any funds received under this section into the general fund of the jurisdiction of which he or she is an officer. No liability under this section shall exceed the cumulative amount stated in the late statement or report, or one hundred dollars ($100), whichever is greater.
(Amended by Stats. 1993, Ch. 1140, Sec. 4. Effective January 1, 1994. Note: This section was added on June 4, 1974, by initiative Prop. 9.)

91013.5.

(a) In addition to any other available remedies, the commission or the filing officer may bring a civil action and obtain a judgment in superior court for the purpose of collecting any unpaid monetary penalties, fees, or civil penalties imposed pursuant to this title. The action may be filed as a small claims, limited civil, or unlimited civil case, depending on the jurisdictional amount. The venue for this action shall be in the county where the monetary penalties, fees, or civil penalties were imposed by the commission or the filing officer. In order to obtain a judgment in a proceeding under this section, the commission or filing officer shall show, following the procedures and rules of evidence as applied in ordinary civil actions, all of the following:

(1) That the monetary penalties, fees, or civil penalties were imposed following the procedures set forth in this title and implementing regulations.

(2) That the defendant or defendants in the action were notified, by actual or constructive notice, of the imposition of the monetary penalties, fees, or civil penalties.

(3) That a demand for payment has been made by the commission or the filing officer and full payment has not been received.

(b) A civil action brought pursuant to subdivision (a) shall be commenced within four years after the date on which the monetary penalty, fee, or civil penalty was imposed.

(Amended by Stats. 2004, Ch. 483, Sec. 5. Effective January 1, 2005.)

GOVERNMENT CODE
SECTION 1090

Government Code - GOV
TITLE 1. GENERAL [100 - 7914] (Title 1 enacted by Stats. 1943, Ch. 134.)

DIVISION 4. PUBLIC OFFICERS AND EMPLOYEES [1000 - 3599] (Division 4 enacted by Stats. 1943, Ch. 134.)

CHAPTER 1. General [1000 - 1241] (Chapter 1 enacted by Stats. 1943, Ch. 134.)

ARTICLE 4. Prohibitions Applicable to Specified Officers [1090 - 1099] (Article 4 enacted by Stats. 1943, Ch. 134.)

1090.

(a) Members of the Legislature, state, county, district, judicial district, and city officers or employees shall not be financially interested in any contract made by them in their official capacity, or by any body or board of which they are members. Nor shall state, county, district, judicial district, and city officers or employees be purchasers at any sale or vendors at any purchase made by them in their official capacity.

(b) An individual shall not aid or abet a Member of the Legislature or a state, county, district, judicial district, or city officer or employee in violating subdivision (a).

(c) As used in this article, “district” means any agency of the state formed pursuant to general law or special act, for the local performance of governmental or proprietary functions within limited boundaries.

(Amended by Stats. 2014, Ch. 483, Sec. 1. (SB 952) Effective January 1, 2015.)

Title 25. Housing and Community Development

Division 2. California Housing Finance Agency

Chapter 1. General

Article 1. Conflict-of-Interest Code

25 CCR § 10001

10001. General Provisions.

The Political Reform Act, Government Code sections 81000, *et seq.*, requires state and local government agencies to adopt and promulgate Conflict-of-Interest Codes. The Fair Political Practices Commission has adopted a regulation, 2 California Code of Regulations section 18730, which contains the terms of a standard Conflict-of-Interest Code, which can be incorporated by reference, and which may be amended by the Fair Political Practices Commission to conform to amendments in the Political Reform Act after public notice and hearings. Therefore, the terms of 2 California Code of Regulations section 18730 and any amendments to it duly adopted by the Fair Political Practices Commission, along with the attached Appendices in which officials and employees are designated and disclosure categories are set forth, are hereby incorporated by reference and constitute the Conflict-of-Interest Code of the California Housing Finance Agency (the Agency).

Board Members and the Executive Director must file their statement of economic interests electronically with the Fair Political Practices Commission. All other individuals holding designated positions must file their statements with the Agency. All statements must be made available for public inspection and reproduction under Government Code Section 81008.

Conflict-of-Interest Code of the California Housing Finance Agency Appendices
Appendix A

	Assigned
	Disclosure
Designated Employees	***Category***
Persons holding the following positions	
and/or the following classifications are	
"designated employees":	
Board of Directors	
Board Member (All members of the Board, Alternates,	

Designees, and Ex-Officio Members, other than the	
State Treasurer	**1, 2, 3, 4**
Executive	
Executive Director	**1, 2, 3, 4**
Chief Deputy Director	**1, 2, 3, 4**
Director of Legislation and CalHFA Mortgage Assistance	
Corporation	**1, 2, 3, 4**
Director of Enterprise Risk Management	**1, 2, 3, 4**
Director of Business Affairs and Governmental Relations	**1, 2, 3, 4**
Administration	
Director of Administration	**1, 2, 3, 4**
Staff Services Manager (all classes and all levels)	**1, 2, 3, 4**
Information Technology	
Chief Information Officer	**2, 4**
Systems Software Specialist III (Supervisory)	**4**
Senior Programmer Analyst (Supervisor)	**4**
Systems Software Specialist II (Technical) (Network Systems	
Administration)	**3, 4**
Data Processing Manager II (Information Security Officer)	**4**

Staff Information Systems Analyst (Specialist)	
(Network Systems Administration)	**3, 4**
Associate Information Systems Analyst (Specialist)	
(Technical Support & Procurement Administration)	**3, 4**
Marketing	
Director of Marketing	**2, 4**
Legal	
General Counsel	**1, 2, 3, 4**
Assistant Chief Counsel	**1, 2, 3, 4**
Attorney (all classes and all levels)	**1, 2, 3, 4**
Financing	
Director of Financing	**1, 2, 4**
Risk Manager	**1, 2, 4**
Accounting Administrator III	**1, 2, 4**
Financing Officer	**1, 2, 4**
Housing Finance Officer (all classes)	**1, 2, 4**
Financing Specialist	**1, 2, 4**
Fiscal Services	
Comptroller	**2, 4**

Deputy Comptroller	**2, 4**
Accounting Administrator II	**3, 4**
Single Family	
Director of Homeownership (Single Family Lending)	**1, 2, 4**
Deputy Director	**1, 2**
Housing Finance Chief (all classes)	**1, 2, 4**
Housing Finance Officer (all classes)	**1, 2, 4**
Housing Finance Specialist (all classes)	**1, 2, 4**
Staff Services Manager (all classes and all levels)	**1, 2, 4**
Multifamily Programs	
Director of Multifamily Programs	**1, 2, 4**
Credit Officer (CEA)	**1, 2, 4**
Deputy Director MF Programs	**1, 2, 4**
Housing Finance Chief (all classes)	**1, 2, 4**
Senior Housing Construction Inspector	**1, 2, 4**
Housing Construction Inspector	**1, 2, 4**
Housing Finance Officer (all classes)	**1, 2, 4**

Staff Services Manager (all classes and all levels)	**1, 2, 4**
Housing Maintenance Inspector	**1, 2, 4**
Consultants	
Consultants and New Positions	*

*Consultants and New Positions

"Individuals providing services as a Consultant defined in Regulation 18700.3 or in a new position created since this Code was last approved that makes or participates in making decisions shall disclose pursuant to the broadest disclosure category in this Code subject to the following limitation: The General Counsel may determine that, due to the range of duties or contractual obligations, it is more appropriate to assign a limited disclosure requirement. A clear explanation of the duties and a statement of the extent of the disclosure requirements must be in a written document (Gov. Code Sec. 82019; FPPC Regulations 18219 and 18734). The General Counsel's determination is a public record and shall be retained for public inspection in the same manner and location as this Conflict-of-Interest Code (Gov. Code Sec. 81008)."

Appendix B
Disclosure Categories

Category 1 *- Interests in Real Property*
Designated employees in Category 1 must report:

All interests in real property in the State of California.

Category 2 *- Interests in Housing Sponsors, Contractors, and Professional Service Providers*

Designated employees in Category 2 must report:
All investments, business positions and sources of income, including receipt of gifts, loans and travel payments, from sources that:

(A) Are any person or entity which is defined by part I, chapter 2, of the Zenovich-Moscone-Chacon Housing and Home Finance Act (chapter 2 commences at section 50050 of the California Health and Safety Code) to be any of the following:

(1) "housing sponsor"
(2) "limited-dividend housing sponsor"
(3) "qualified mortgage lender"; or,
(B) Are any person or entity that:
(1) contracts or otherwise does business with the Agency

(2) has contracted or otherwise done business with the Agency within the previous two years
(3) is soliciting a contract or other business from the Agency; or,
(C) Are any of the following:
(1) financial services company
(2) bank, including commercial bank, mortgage bank, thrift, credit union, or similar lender
(3) investment bank
(4) real estate services company
(5) brokerage company
(6) insurance company
(7) title company
(8) escrow company
(9) building or construction contractor or subcontractor; or,
(10) law firm that represents persons or entities described in Categories 2, 3 or 4.

Category 3 *- Interests in Facilities Contractors*

Designated employees in Category 3 must report:
All investments and business positions in business entities, and income, including receipt of gifts, loans, and travel payments, from sources that are of the type that, within the previous two years, have contracted with the Agency to provide leased facilities, supplies, materials, machinery, equipment, or services, including training and consulting services, to the Agency, or have otherwise done business with the Agency.

Category 4 *- Interests in Information Technology Sector*

Designated employees in Category 4 must report:
All investments and business positions in business entities, and income, including receipt of gifts, loans, and travel payments, from sources that manufacture, distribute, supply, or install computer hardware or software of the type utilized by the Agency, as well as entities providing computer consultant services to the Agency.
Note: Authority cited: Sections 87300 and 87304, Government Code. Reference: Sections 87300, et seq., Government Code.

HISTORY

1. Repealer of chapter 1 (article 1, sections 10001-10006) and new chapter 1 (article 1, sections 10001-10011) filed 8-12-77; effective thirtieth day thereafter. Approved by Fair Political Practices Commission 4-20-77 (Register 77, No. 37). For prior history, see Registers 75, No. 49; and 76, No. 20.
2. Repealer of article 1 (sections 10001-10011 and Exhibits A and B) and new article 1 (section 10001 and Appendix) filed 2-26-81; effective thirtieth day thereafter. Approved by Fair Political Practices Commission 12-1-80 (Register 81, No. 9).
3. Amendment of Appendix filed 6-14-84; effective thirtieth day thereafter. Approved by Fair Political Practices Commission 5-7-84 (Register 84, No. 24).
4. Amendment of Appendix refiled 10-4-84; effective thirtieth day thereafter. Approved by Fair Political Practices Commission 5-7-84 (Register 84, No. 40).

5. Amendment of section 10001 and Appendix filed 1-30-91; operative 3-1-91. Approved by Fair Political Practices Commission 12-6-90 (Register 91, No. 14).
6. Amendment of section and Appendix filed 4-18-96; operative 5-18-96. Approved by Fair Political Practices Commission 2-8-96 (Register 96, No. 16).
7. Amendment of section and Appendix filed 7-28-97; operative 8-27-97. Approved by Fair Political Practices Commission 6-4-97 (Register 97, No. 31).
8. Amendment of section and Appendix filed 2-7-2006; operative 3-9-2006. Approved by Fair Political Practices Commission 12-16-2005 (Register 2006, No. 6).
9. Amendment of article heading and section and redesignation and amendment of former Appendix as new Appendix A and Appendix B filed 3-26-2010; operative 4-25-2010. Approved by Fair Political Practices Commission 3-3-2010 (Register 2010, No. 13).
10. Repealer of section and Appendices A and B and new section and Appendices A and B filed 2-18-2016; operative 3-19-2016 pursuant to Cal. Code Regs., tit. 2, section 18750(l). Approved by the Fair Political Practices Commission 1-28-2016 and submitted to OAL for filing and printing only pursuant to Cal. Code Regs., tit. 2, section 18750(k) (Register 2016, No. 8).
11. Amendment of section and Appendix A filed 1-18-2018; operative 2-17-2018 pursuant to Cal. Code Regs., tit. 2, section 18750(l). Approved by the Fair Political Practices Commission 12-7-2017 and submitted to OAL for filing and printing only pursuant to Cal. Code Regs., tit. 2, section 18750(k) (Register 2018, No. 3).

California Code of Regulations
Title 2. Administration
Division 6. Fair Political Practices Commission
Chapter 7. Conflicts of Interest
Article 2. Disclosure

2 CCR § 18730

18730. Provisions of Conflict of Interest Codes.

a) Incorporation by reference of the terms of this regulation along with the designation of employees and the formulation of disclosure categories in the Appendix referred to below constitute the adoption and promulgation of a conflict of interest code within the meaning of Section 87300 or the amendment of a conflict of interest code within the meaning of Section 87306 if the terms of this regulation are substituted for terms of a conflict of interest code already in effect. A code so amended or adopted and promulgated requires the reporting of reportable items in a manner substantially equivalent to the requirements of article 2 of chapter 7 of the Political Reform Act, Sections 81000, et seq. The requirements of a conflict of interest code are in addition to other requirements of the Political Reform Act, such as the general prohibition against conflicts of interest contained in Section 87100, and to other state or local laws pertaining to conflicts of interest.

(b) The terms of a conflict of interest code amended or adopted and promulgated pursuant to this regulation are as follows:

(1) Section 1. Definitions.

The definitions contained in the Political Reform Act of 1974, regulations of the Fair Political Practices Commission (Regulations 18110, et seq.), and any amendments to the Act or regulations, are incorporated by reference into this conflict of interest code.

(2) Section 2. Designated Employees.

The persons holding positions listed in the Appendix are designated employees. It has been determined that these persons make or participate in the making of decisions which may foreseeably have a material effect on economic interests.

(3) Section 3. Disclosure Categories.

This code does not establish any disclosure obligation for those designated employees who are also specified in Section 87200 if they are designated in this code in that same capacity or if the geographical jurisdiction of this agency is the same as or is wholly included within the jurisdiction in which those persons must report their economic interests pursuant to article 2 of chapter 7 of the Political Reform Act, Sections 87200, et seq.

In addition, this code does not establish any disclosure obligation for any designated employees who are designated in a conflict of interest code for another agency, if all of the following apply:

(A) The geographical jurisdiction of this agency is the same as or is wholly included within the jurisdiction of the other agency;

(B) The disclosure assigned in the code of the other agency is the same as that required under article 2 of chapter 7 of the Political Reform Act, Section 87200; and

(C) The filing officer is the same for both agencies.1

Such persons are covered by this code for disqualification purposes only. With respect to all other designated employees, the disclosure categories set forth in the Appendix specify which kinds of economic interests are reportable. Such a designated employee shall disclose in his or her statement of economic interests those economic interests he or she has which are of the kind described in the disclosure categories to which he or she is assigned in the Appendix. It has been determined that the economic interests set forth in a designated employee's disclosure categories are the kinds of economic interests which he or she foreseeably can affect materially through the conduct of his or her office.

(4) Section 4. Statements of Economic Interests: Place of Filing.

The code reviewing body shall instruct all designated employees within its code to file statements of economic interests with the agency or with the code reviewing body, as provided by the code reviewing body in the agency's conflict of interest code.2

(5) Section 5. Statements of Economic Interests: Time of Filing.

(A) Initial Statements. All designated employees employed by the agency on the effective date of this code, as originally adopted, promulgated and approved by the code reviewing body, shall file statements within 30 days after the effective date of this code. Thereafter, each person already in a position when it is designated by an amendment to this code shall file an initial statement within 30 days after the effective date of the amendment.

(B) Assuming Office Statements. All persons assuming designated positions after the effective date of this code shall file statements within 30 days after assuming the designated positions, or if subject to State Senate confirmation, 30 days after being nominated or appointed.

(C) Annual Statements. All designated employees shall file statements no later than April 1. If a person reports for military service as defined in the Servicemember's Civil Relief Act, the deadline for the annual statement of economic interests is 30 days following his or her return to office, provided the person, or someone authorized to represent the person's interests, notifies the filing officer in writing prior to the applicable filing deadline that he or she is subject to that federal statute and is unable to meet the applicable deadline, and provides the filing officer verification of his or her military status.

(D) Leaving Office Statements. All persons who leave designated positions shall file statements within 30 days after leaving office.

(5.5) Section 5.5. Statements for Persons Who Resign Prior to Assuming Office.

Any person who resigns within 12 months of initial appointment, or within 30 days of the date of notice provided by the filing officer to file an assuming office statement, is not deemed to have assumed office or left office, provided he or she did not make or participate in the making of, or use his or her position to influence any decision and did not receive or become entitled to receive any form of payment as a result of his or her appointment. Such persons shall not file either an assuming or leaving office statement.

(A) Any person who resigns a position within 30 days of the date of a notice from the filing officer shall do both of the following:

(1) File a written resignation with the appointing power; and

(2) File a written statement with the filing officer declaring under penalty of perjury that during the period between appointment and resignation he or she did not make, participate in the making, or use the position to influence any decision of the agency or receive, or become entitled to receive, any form of payment by virtue of being appointed to the position.

(6) Section 6. Contents of and Period Covered by Statements of Economic Interests.

(A) Contents of Initial Statements.

Initial statements shall disclose any reportable investments, interests in real property and business positions held on the effective date of the code and income received during the 12 months prior to the effective date of the code.

(B) Contents of Assuming Office Statements.

Assuming office statements shall disclose any reportable investments, interests in real property and business positions held on the date of assuming office or, if subject to State Senate confirmation or appointment, on the date of nomination, and income received during the 12 months prior to the date of assuming office or the date of being appointed or nominated, respectively.

(C) Contents of Annual Statements. Annual statements shall disclose any reportable investments, interests in real property, income and business positions held or received during the previous calendar year provided, however, that the period covered by an employee's first annual statement shall begin on the effective date of the code or the date of assuming office whichever is later, or for a board or commission member subject to Section 87302.6, the day after the closing date of the most recent statement filed by the member pursuant to Regulation 18754.

(D) Contents of Leaving Office Statements.

Leaving office statements shall disclose reportable investments, interests in real property, income and business positions held or received during the period between the closing date of the last statement filed and the date of leaving office.

(7) Section 7. Manner of Reporting.

Statements of economic interests shall be made on forms prescribed by the Fair Political Practices Commission and supplied by the agency, and shall contain the following information:

(A) Investment and Real Property Disclosure.

When an investment or an interest in real property3 is required to be reported,4 the statement shall contain the following:

1. A statement of the nature of the investment or interest;

2. The name of the business entity in which each investment is held, and a general description of the business activity in which the business entity is engaged;

3. The address or other precise location of the real property;

4. A statement whether the fair market value of the investment or interest in real property equals or exceeds $2,000, exceeds $10,000, exceeds $100,000, or exceeds $1,000,000.

(B) Personal Income Disclosure. When personal income is required to be reported,5 the statement shall contain:

1. The name and address of each source of income aggregating $500 or more in value, or $50 or more in value if the income was a gift, and a general description of the business activity, if any, of each source;

2. A statement whether the aggregate value of income from each source, or in the case of a loan, the highest amount owed to each source, was $1,000 or less, greater than $1,000, greater than $10,000, or greater than $100,000;

3. A description of the consideration, if any, for which the income was received;

4. In the case of a gift, the name, address and business activity of the donor and any intermediary through which the gift was made; a description of the gift; the amount or value of the gift; and the date on which the gift was received;

5. In the case of a loan, the annual interest rate and the security, if any, given for the loan and the term of the loan.

(C) Business Entity Income Disclosure. When income of a business entity, including income of a sole proprietorship, is required to be reported,6 the statement shall contain:

1. The name, address, and a general description of the business activity of the business entity;

2. The name of every person from whom the business entity received payments if the filer's pro rata share of gross receipts from such person was equal to or greater than $10,000.

(D) Business Position Disclosure. When business positions are required to be reported, a designated employee shall list the name and address of each business entity in which he or she is a director, officer, partner, trustee, employee, or in which he or she holds any position of management, a description of the business activity in which the business entity is engaged, and the designated employee's position with the business entity.

(E) Acquisition or Disposal During Reporting Period. In the case of an annual or leaving office statement, if an investment or an interest in real property was partially or wholly acquired or disposed of during the period covered by the statement, the statement shall contain the date of acquisition or disposal.

(8) Section 8. Prohibition on Receipt of Honoraria.

(A) No member of a state board or commission, and no designated employee of a state or local government agency, shall accept any honorarium from any source, if the member or employee would be required to report the receipt of income or gifts from that source on his or her statement of economic interests.

(B) This section shall not apply to any part-time member of the governing board of any public institution of higher education, unless the member is also an elected official.

(C) Subdivisions (a), (b), and (c) of Section 89501 shall apply to the prohibitions in this section.

(D) This section shall not limit or prohibit payments, advances, or reimbursements for travel and related lodging and subsistence authorized by Section 89506.

(8.1) Section 8.1. Prohibition on Receipt of Gifts in Excess of $500.

(A) No member of a state board or commission, and no designated employee of a state or local government agency, shall accept gifts with a total value of more than $500 in a calendar year from any single source, if the member or employee would be required to report the receipt of income or gifts from that source on his or her statement of economic interests.

(B) This section shall not apply to any part-time member of the governing board of any public institution of higher education, unless the member is also an elected official.

(C) Subdivisions (e), (f), and (g) of Section 89503 shall apply to the prohibitions in this section.

(8.2) Section 8.2. Loans to Public Officials.

(A) No elected officer of a state or local government agency shall, from the date of his or her election to office through the date that he or she vacates office, receive a personal loan from

any officer, employee, member, or consultant of the state or local government agency in which the elected officer holds office or over which the elected officer's agency has direction and control.

(B) No public official who is exempt from the state civil service system pursuant to subdivisions (c), (d), (e), (f), and (g) of Section 4 of Article VII of the Constitution shall, while he or she holds office, receive a personal loan from any officer, employee, member, or consultant of the state or local government agency in which the public official holds office or over which the public official's agency has direction and control. This subdivision shall not apply to loans made to a public official whose duties are solely secretarial, clerical, or manual.

(C) No elected officer of a state or local government agency shall, from the date of his or her election to office through the date that he or she vacates office, receive a personal loan from any person who has a contract with the state or local government agency to which that elected officer has been elected or over which that elected officer's agency has direction and control. This subdivision shall not apply to loans made by banks or other financial institutions or to any indebtedness created as part of a retail installment or credit card transaction, if the loan is made or the indebtedness created in the lender's regular course of business on terms available to members of the public without regard to the elected officer's official status.

(D) No public official who is exempt from the state civil service system pursuant to subdivisions (c), (d), (e), (f), and (g) of Section 4 of Article VII of the Constitution shall, while he or she holds office, receive a personal loan from any person who has a contract with the state or local government agency to which that elected officer has been elected or over which that elected officer's agency has direction and control. This subdivision shall not apply to loans made by banks or other financial institutions or to any indebtedness created as part of a retail installment or credit card transaction, if the loan is made or the indebtedness created in the lender's regular course of business on terms available to members of the public without regard to the elected officer's official status. This subdivision shall not apply to loans made to a public official whose duties are solely secretarial, clerical, or manual.

(E) This section shall not apply to the following:

1. Loans made to the campaign committee of an elected officer or candidate for elective office.

2. Loans made by a public official's spouse, child, parent, grandparent, grandchild, brother, sister, parent-in-law, brother-in-law, sister-in-law, nephew, niece, aunt, uncle, or first cousin, or the spouse of any such persons, provided that the person making the loan is not acting as an agent or intermediary for any person not otherwise exempted under this section.

3. Loans from a person which, in the aggregate, do not exceed $500 at any given time.

4. Loans made, or offered in writing, before January 1, 1998.

(8.3) Section 8.3. Loan Terms.

(A) Except as set forth in subdivision (B), no elected officer of a state or local government agency shall, from the date of his or her election to office through the date he or she vacates office, receive a personal loan of $500 or more, except when the loan is in writing and clearly states the terms of the loan, including the parties to the loan agreement, date of the loan, amount of the loan, term of the loan, date or dates when payments shall be due on the loan and the amount of the payments, and the rate of interest paid on the loan.

(B) This section shall not apply to the following types of loans:

1. Loans made to the campaign committee of the elected officer.

2. Loans made to the elected officer by his or her spouse, child, parent, grandparent, grandchild, brother, sister, parent-in-law, brother-in-law, sister-in-law, nephew, niece, aunt, uncle, or first cousin, or the spouse of any such person, provided that the person making the loan is not acting as an agent or intermediary for any person not otherwise exempted under this section.

3. Loans made, or offered in writing, before January 1, 1998.

(C) Nothing in this section shall exempt any person from any other provision of Title 9 of the Government Code.

(8.4) Section 8.4. Personal Loans.

(A) Except as set forth in subdivision (B), a personal loan received by any designated employee shall become a gift to the designated employee for the purposes of this section in the following circumstances:

1. If the loan has a defined date or dates for repayment, when the statute of limitations for filing an action for default has expired.

2. If the loan has no defined date or dates for repayment, when one year has elapsed from the later of the following:

a. The date the loan was made.

b. The date the last payment of $100 or more was made on the loan.

c. The date upon which the debtor has made payments on the loan aggregating to less than $250 during the previous 12 months.

(B) This section shall not apply to the following types of loans:

1. A loan made to the campaign committee of an elected officer or a candidate for elective office.

2. A loan that would otherwise not be a gift as defined in this title.

3. A loan that would otherwise be a gift as set forth under subdivision (A), but on which the creditor has taken reasonable action to collect the balance due.

4. A loan that would otherwise be a gift as set forth under subdivision (A), but on which the creditor, based on reasonable business considerations, has not undertaken collection action. Except in a criminal action, a creditor who claims that a loan is not a gift on the basis of this paragraph has the burden of proving that the decision for not taking collection action was based on reasonable business considerations.

5. A loan made to a debtor who has filed for bankruptcy and the loan is ultimately discharged in bankruptcy.

(C) Nothing in this section shall exempt any person from any other provisions of Title 9 of the Government Code.

(9) Section 9. Disqualification.

No designated employee shall make, participate in making, or in any way attempt to use his or her official position to influence the making of any governmental decision which he or she knows or has reason to know will have a reasonably foreseeable material financial effect, distinguishable from its effect on the public generally, on the official or a member of his or her immediate family or on:

(A) Any business entity in which the designated employee has a direct or indirect investment worth $2,000 or more;

(B) Any real property in which the designated employee has a direct or indirect interest worth $2,000 or more;

(C) Any source of income, other than gifts and other than loans by a commercial lending institution in the regular course of business on terms available to the public without regard to official status, aggregating $500 or more in value provided to, received by or promised to the designated employee within 12 months prior to the time when the decision is made;

(D) Any business entity in which the designated employee is a director, officer, partner, trustee, employee, or holds any position of management; or

(E) Any donor of, or any intermediary or agent for a donor of, a gift or gifts aggregating $500 or more provided to, received by, or promised to the designated employee within 12 months prior to the time when the decision is made.

(9.3) Section 9.3. Legally Required Participation.

No designated employee shall be prevented from making or participating in the making of any decision to the extent his or her participation is legally required for the decision to be made.

The fact that the vote of a designated employee who is on a voting body is needed to break a tie does not make his or her participation legally required for purposes of this section.

(9.5) Section 9.5. Disqualification of State Officers and Employees.

In addition to the general disqualification provisions of section 9, no state administrative official shall make, participate in making, or use his or her official position to influence any governmental decision directly relating to any contract where the state administrative official knows or has reason to know that any party to the contract is a person with whom the state administrative official, or any member of his or her immediate family has, within 12 months prior to the time when the official action is to be taken:

(A) Engaged in a business transaction or transactions on terms not available to members of the public, regarding any investment or interest in real property; or

(B) Engaged in a business transaction or transactions on terms not available to members of the public regarding the rendering of goods or services totaling in value $1,000 or more.

(10) Section 10. Disclosure of Disqualifying Interest.

When a designated employee determines that he or she should not make a governmental decision because he or she has a disqualifying interest in it, the determination not to act may be accompanied by disclosure of the disqualifying interest.

(11) Section 11. Assistance of the Commission and Counsel.

Any designated employee who is unsure of his or her duties under this code may request assistance from the Fair Political Practices Commission pursuant to Section 83114 and Regulations 18329 and 18329.5 or from the attorney for his or her agency, provided that nothing in this section requires the attorney for the agency to issue any formal or informal opinion.

(12) Section 12. Violations.

This code has the force and effect of law. Designated employees violating any provision of this code are subject to the administrative, criminal and civil sanctions provided in the Political Reform Act, Sections 81000-91014. In addition, a decision in relation to which a violation of the disqualification provisions of this code or of Section 87100 or 87450 has occurred may be set aside as void pursuant to Section 91003.

1 Designated employees who are required to file statements of economic interests under any other agency's conflict of interest code, or under article 2 for a different jurisdiction, may expand their statement of economic interests to cover reportable interests in both jurisdictions, and file copies of this expanded statement with both entities in lieu of filing separate and

distinct statements, provided that each copy of such expanded statement filed in place of an original is signed and verified by the designated employee as if it were an original. See Section 81004.

2 See Section 81010 and Regulation 18115 for the duties of filing officers and persons in agencies who make and retain copies of statements and forward the originals to the filing officer.

3 For the purpose of disclosure only (not disqualification), an interest in real property does not include the principal residence of the filer.

4 Investments and interests in real property which have a fair market value of less than $2,000 are not investments and interests in real property within the meaning of the Political Reform Act. However, investments or interests in real property of an individual include those held by the individual's spouse and dependent children as well as a pro rata share of any investment or interest in real property of any business entity or trust in which the individual, spouse and dependent children own, in the aggregate, a direct, indirect or beneficial interest of 10 percent or greater.

5 A designated employee's income includes his or her community property interest in the income of his or her spouse but does not include salary or reimbursement for expenses received from a state, local or federal government agency.

6 Income of a business entity is reportable if the direct, indirect or beneficial interest of the filer and the filer's spouse in the business entity aggregates a 10 percent or greater interest. In addition, the disclosure of persons who are clients or customers of a business entity is required only if the clients or customers are within one of the disclosure categories of the filer.

Note: Authority cited: Section 83112, Government Code. Reference: Sections 87103(e), 87300-87302, 89501, 89502 and 89503, Government Code.

HISTORY

1. New section filed 4-2-80 as an emergency; effective upon filing (Register 80, No. 14). Certificate of Compliance included.

2. Editorial correction (Register 80, No. 29).

3. Amendment of subsection (b) filed 1-9-81; effective thirtieth day thereafter (Register 81, No. 2).

4. Amendment of subsection (b)(7)(B)1. filed 1-26-83; effective thirtieth day thereafter (Register 83, No. 5).

5. Amendment of subsection (b)(7)(A) filed 11-10-83; effective thirtieth day thereafter (Register 83, No. 46).

6. Amendment filed 4-13-87; operative 5-13-87 (Register 87, No. 16).

7. Amendment of subsection (b) filed 10-21-88; operative 11-20-88 (Register 88, No. 46).

8. Amendment of subsections (b)(8)(A) and (b)(8)(B) and numerous editorial changes filed 8-28-90; operative 9-27-90 (Reg. 90, No. 42).

9. Amendment of subsections (b)(3), (b)(8) and renumbering of following subsections and amendment of Note filed 8-7-92; operative 9-7-92 (Register 92, No. 32).

10. Amendment of subsection (b)(5.5) and new subsections (b)(5.5)(A)-(A)(2) filed 2-4-93; operative 2-4-93 (Register 93, No. 6).

11. Change without regulatory effect adopting Conflict of Interest Code for California Mental Health Planning Council filed 11-22-93 pursuant to title 1, section 100, California Code of Regulations (Register 93, No. 48). Approved by Fair Political Practices Commission 9-21-93.

12. Change without regulatory effect redesignating Conflict of Interest Code for California Mental Health Planning Council as chapter 62, section 55100 filed 1-4-94 pursuant to title 1, section 100, California Code of Regulations (Register 94, No. 1).

13. Editorial correction adding History 11 and 12 and deleting duplicate section number (Register 94, No. 17).

14. Amendment of subsection (b)(8), designation of subsection (b)(8)(A), new subsection (b)(8)(B), and amendment of subsections (b)(8.1)-(b)(8.1)(B), (b)(9)(E) and Note filed 3-14-95; operative 3-14-95 pursuant to Government Code section 11343.4(d) (Register 95, No. 11).

15. Editorial correction inserting inadvertently omitted language in footnote 4 (Register 96, No. 13).

16. Amendment of subsections (b)(8)(A)-(B) and (b)(8.1)(A), repealer of subsection (b)(8.1)(B), and amendment of subsection (b)(12) filed 10-23-96; operative 10-23-96 pursuant to Government Code section 11343.4(d) (Register 96, No. 43).

17. Amendment of subsections (b)(8.1) and (9)(E) filed 4-9-97; operative 4-9-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 15).

18. Amendment of subsections (b)(7)(B)5., new subsections (b)(8.2)-(b)(8.4)(C) and amendment of Note filed 8-24-98; operative 8-24-98 pursuant to Government Code section 11343.4(d) (Register 98, No. 35).

19. Editorial correction of subsection (a) (Register 98, No. 47).

20. Amendment of subsections (b)(8.1), (b)(8.1)(A) and (b)(9)(E) filed 5-11-99; operative 5-11-99 pursuant to Government Code section 11343.4(d) (Register 99, No. 20).

21. Amendment of subsections (b)(8.1)-(b)(8.1)(A) and (b)(9)(E) filed 12-6-2000; operative 1-1-2001 pursuant to the 1974 version of Government Code section 11380.2 and Title 2, California Code of Regulations, section 18312(d) and (e) (Register 2000, No. 49).

22. Amendment of subsections (b)(3) and (b)(10) filed 1-10-2001; operative 2-1-2001. Submitted to OAL for filing pursuant to Fair Political Practices Commission v. Office of Administrative Law, 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements) (Register 2001, No. 2).

23. Amendment of subsections (b)(7)(A)4., (b)(7)(B)1.-2., (b)(8.2)(E)3., (b)(9)(A)-(C) and footnote 4. filed 2-13-2001. Submitted to OAL for filing pursuant to Fair Political Practices Commission v. Office of Administrative Law, 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements) (Register 2001, No. 7).

24. Amendment of subsections (b)(8.1)-(b)(8.1)(A) filed 1-16-2003; operative 1-1-2003. Submitted to OAL for filing pursuant to Fair Political Practices Commission v. Office of Administrative Law, 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements) (Register 2003, No. 3).

25. Editorial correction of History 24 (Register 2003, No. 12).

26. Editorial correction removing extraneous phrase in subsection (b)(9.5)(B) (Register 2004, No. 33).

27. Amendment of subsections (b)(2)-(3), (b)(3)(C), (b)(6)(C), (b)(8.1)-(b)(8.1)(A), (b)(9)(E) and (b)(11)-(12) filed 1-4-2005; operative 1-1-2005 pursuant to Government Code section 11343.4 (Register 2005, No. 1).

28. Amendment of subsection (b)(7)(A)4. filed 10-11-2005; operative 11-10-2005 (Register 2005, No. 41).

29. Amendment of subsections (a), (b)(1), (b)(3), (b)(8.1), (b)(8.1)(A) and (b)(9)(E) filed 12-18-2006; operative 1-1-2007. Submitted to OAL pursuant to Fair Political Practices Commission v. Office of Administrative Law, 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements) (Register 2006, No. 51).

30. Amendment of subsections (b)(8.1)-(b)(8.1)(A) and (b)(9)(E) filed 10-31-2008; operative 11-30-2008. Submitted to OAL for filing pursuant to Fair Political Practices Commission v. Office of Administrative Law, 3 Civil C010924, California Court of Appeal, Third Appellate District,

nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements and not subject to procedural or substantive review by OAL) (Register 2008, No. 44).

31. Amendment of section heading and section filed 11-15-2010; operative 12-15-2010. Submitted to OAL for filing pursuant to Fair Political Practices Commission v. Office of Administrative Law, 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements and not subject to procedural or substantive review by OAL) (Register 2010, No. 47).

32. Amendment of section heading and subsections (a)-(b)(1), (b)(3)-(4), (b)(5)(C), (b)(8.1)-(b)(8.1)(A) and (b)(9)(E) and amendment of footnote 1 filed 1-8-2013; operative 2-7-2013. Submitted to OAL for filing pursuant to Fair Political Practices Commission v. Office of Administrative Law, 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements and not subject to procedural or substantive review by OAL) (Register 2013, No. 2).

33. Amendment of subsections (b)(8.1)-(b)(8.1)(A), (b)(8.2)(E)3. and (b)(9)(E) filed 12-15-2014; operative 1-1-2015 pursuant to section 18312(e)(1)(A), title 2, California Code of Regulations. Submitted to OAL for filing and printing pursuant to Fair Political Practices Commission v. Office of Administrative Law, 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements) (Register 2014, No. 51).

34. Redesignation of portions of subsection (b)(8)(A) as new subsections (b)(8)(B)-(D), amendment of subsections (b)(8.1)-(b)(8.1)(A), redesignation of portions of subsection (b)(8.1)(A) as new subsections (b)(8.1)(B)-(C) and amendment of subsection (b)(9)(E) filed 12-1-2016; operative 12-31-2016 pursuant to Cal. Code Regs. tit. 2, section 18312(e). Submitted to OAL for filing pursuant to Fair Political Practices Commission v. Office of Administrative Law, 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements and not subject to procedural or substantive review by OAL) (Register 2016, No. 49).

35. Amendment of subsections (b)(8.1)-(b)(8.1)(A) and (b)(9)(E) filed 12-12-2018; operative 1-11-2019 pursuant to Cal. Code Regs., tit. 2, section 18312(e). Submitted to OAL for filing and printing pursuant to Fair Political Practices Commission v. Office of Administrative Law, 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements and not subject to procedural or substantive review by OAL) (Register 2018, No. 50).

This database is current through 12/21/18 Register 2018, No. 51

2 CCR § 18730, 2 CA ADC § 18730

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WELCOME TO THE BOARD!

Being a Board member is an honor, but also a responsibility

It is an honor and a privilege to be appointed a member of the board of directors of a housing finance agency (HFA). You will be directing a powerful financial force in the provision of affordable housing in your state.

But it is also a heavy responsibility and requires hard work. You will make decisions that affect the lives of many people now—and many more in the future. You will govern the borrowing and expenditure of millions, if not billions, of dollars.

A major factor that makes the job so tough is that board members rarely come to the job well prepared to do it, in part because HFAs are one-of-a-kind organizations and the policy and financial aspects of HFA operations are unique and complex.

Although a board member comes to the job with the best of intentions, good intentions are not enough. No one is born with the knowledge and ability to be a good board member. Boardmanship is an acquired skill that must be learned, honed to a sharp edge and regularly updated.

Two major challenges face board members. The first is the task of governing the HFA. The board members will plan, monitor things like finance and programs, interact with politicians and interested public and private sector groups, evaluate the progress of the HFA and a hundred other things to keep the HFA viable and moving.

But the second major task is equally important. The board members must become a part of the board team and keep that team functioning at an optimum level. If board members do not do a good job of building and maintaining skills of teamwork and good boardmanship, the board will not be able to accomplish the first task—governing the organization well.

NATURE OF THE HFA

HFAs are unique financial organizations

An HFA is a unique financial organization. It is not a true political subdivision—its members are not elected by the populace and it has no taxing powers. It is not a private nonprofit corporation, which determines its own purposes and selects its own directors—the legislature has determined the HFA's purposes and powers, and elected state officials (usually the governor) select the board members.

An HFA is a dichotomy—on one hand it is a "municipal corporation," a quasi-governmental entity, established by a specific law with legislatively specified purposes and powers, but on the other hand it is to be operated more like a private nonprofit company, self-supporting and expected to maintain investment-grade ratings on its bonds. Truly a complex challenge for board governance!

The primary mission of an HFA is to provide financing and administer programs for affordable housing. An HFA sometimes undertakes projects and programs that are not strictly economically viable but are important and necessary to those the HFA is directed to serve. The decision to undertake those projects and programs is based on a bottom line of service, not a bottom line of profit.

HFA tax advantages

But an HFA also enjoys important legal and financial benefits. It is exempt from income taxes as well as various state and local taxes. More importantly, it has the ability to borrow money at tax-exempt interest rates, which are lower than conventional taxable rates, and thus enable an HFA to leverage its funds. And it carries out special programs under which it receives and uses federal funds or tax credits for its purposes, or receives preferential treatment.

HFA Overseers and Stakeholders

An HFA has multiple overseers, including:

- Governor and Legislature
- Federal agencies—HUD, IRS, SEC
- Capital markets—investors and rating agencies
- Press

And an HFA has multiple stakeholders, including:

- Lower income persons
- Bondholders
- Non-profit housing entities
- Private industry partners—lenders, developers, realtors
- Financial institution counterparties

BOARD GOVERNS HFA

HFA is governed by Board

By law, most HFAs are governed by a board of directors. The board must:

- set policies consistent with its purposes
- govern the HFA's resources
- make sure the HFA maintains and develops programs for those it serves

A board member has a fiduciary responsibility to act in good faith and in the best interests of the organization. Each board member has an obligation of loyalty and duty to uphold the integrity of the HFA.

A board member must exercise a high degree of diligence to make sure the HFA is operating in the best interest of those it is designed to serve. Each board member has a duty to be informed about the state of the business and affairs of the organization. A board member has the responsibility to make sure that the HFA is properly managed and that its assets are being appropriately utilized.

A board member must not make decisions based on personal interests or other special interests, but must always make decisions based on what is best for the HFA and its purposes.

In a for-profit corporation, the corporation's product has importance only as far as it makes a profit. In an HFA, the product is financing affordable housing—not making a profit per se—and a board member has a moral responsibility to be committed to that mission.

A board member has a responsibility to go beyond any individual interest in solving a problem that affects him personally. A board member must believe strongly in the value of the service the HFA provides—to want to see the organization develop and grow for the good of those it is directed to serve.

Board members will discover that there is never enough money to do all that the HFA could or would like to do. Board members will be faced with hard choices about which program or service to fund. Board members may have to choose between keeping one program over another when the income falls short of the expenses.

Service on an HFA board can be frustrating yet rewarding, frightening yet fun, confusing yet enlightening. It is always challenging and rarely dull. Members will leave the board knowing more about the national capital/debt markets and affordable housing than they ever dreamed possible. If the job of the board members is done as it should be done, the members may work hard and give many hours they probably did not expect to give when they agreed to serve on the board. But the members may also find themselves investing much of themselves and loving every minute of it. That is the nature of an HFA.

THE BOARD WORKS AS A TEAM

Board members are usually community or industry leaders.

There is potential for great strength and power when several influential community and industry leaders come together on the board of directors to govern an HFA. But the beauty of bringing leaders with diverse personalities and perspectives together to govern the HFA also creates real governance challenges.

How is one team with one voice created out of these many diverse voices? It is done by each board member making a special effort to understand and fit into the team effort. No matter what perspective a member brings to the board, the member's first personal goal should be to attempt to fit into the team structure.

Being part of the team does not mean members must give up their personal views and goals, but rather must attempt to find a way to mesh their goals with the goals of the other board members. It may mean forming new team goals to which all board members subscribe.

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The Board must work as a team

In a strict legal sense, the only way individual board members can exercise authority is by making decisions together. Individually, outside the board meeting, a board member has no legal authority to act for the board or HFA or make any decisions for the board. Thus it is essential that individual board members be able to act as a team if any decisions are ever to be made.

In addition, a board member's loyalty can no longer be to special interest groups, or any particular segment of the community, but must now be to the HFA and to the whole community.

A board member may have been selected from a particular geographic area or as a representative of a particular part of the community (nonprofit or for-profit). No matter why a person is appointed to the board, their loyalty must now be to the team effort that serves the best interest of those the HFA serves—not to the special interests of those who helped put the member on the board.

There may even be times when the decisions a board member is asked to make for the organization will come into conflict with decisions the board member has to make as a member of another board. The solution is the same. An HFA board member's loyalty is to the HFA board. If a member cannot accept that principle, the member should seriously consider resigning from the HFA board.

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Executive Director is part of the Board team

There is one nonvoting member of the HFA board team: the executive director.

The relationship between the board and the executive director is not the typical employer/employee relationship, as described in more detail later. The executive director/board member relationship should be one of very high trust and cooperation.

The executive director is such a vital resource to the board's work that the executive director normally sits at the board table and takes part in all deliberations as a team member.

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Upon appointment to the Board

As a new member gains experience on an HFA board, the member will continue to learn facts, financial matters, programs, procedures and a thousand other things. But when first appointed to the board, a member should:

➢Get to know the other people who serve on the board—not just their names, but who they really are.

Where do they live?
What are their occupations?
Do they have families?
What are their real interests and concerns?
What motivates them to serve on the board?

Team building begins by knowing one's teammates. Governance cannot happen without team effort.

➢Get to know the executive director, the other part of the board team. There must be a very high level of trust between those who govern and the person they have chosen to manage. Board members and the executive director form the board team.

➢Learn where to go for answers to your questions. The best defense against being totally lost at the early stage of one's term as a board member is to know the people and resources to quickly obtain answers to the tough questions.

The executive director, a fellow board member or the board chair are the best guides to the ways and means of the organization.

➢Obtain and review basic board materials—the HFA act, the bylaws, all board policies, applicable ethics rules, open meetings rules, the last two years' annual report, the most recent official statement for each of the HFA's major bond programs, and a list of the HFA's professional team. Usually the Executive Director conducts a new member orientation at which these are provided.

➢Learn to learn. Learning the job of boardmanship is a never-ending task.

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Board members must be team builders

A board member should be a team builder. A member should:

➢Listen to fellow board members. Each member has to know where other members are coming from to be able to fit all goals together.

➢Explain his or her position on issues very clearly so fellow board members understand where the member is coming from.

➢Tell fellow board members openly when one agrees with them as well as when one disagrees with them. If a member is vocal only when they disagree it makes them appear to be just a naysayer rather than someone with a legitimate concern about the issue.

➢Not let disagreement on one issue carry over to the next issue on the agenda. Agreement or disagreement should stand on the merits of the issue, not on a clash of personalities.

➢Respect what other board members have to say. Disagree, debate, question, but never ridicule what other board members have to say. Keep in mind that the others around the table have earned their places by also being community or industry leaders. Their opinions carry the weight of experience just as yours do.

➢Avoid forming voting blocks with other board members. Counting votes to simply gather a majority on one issue may pay off this time, but it will be expensive in future deliberations with the board. Advocate strongly for your point of view, but always work for consensus of the full board, not for just a simple majority.

➢Accept the fact that there will be split votes on the board. No matter how hard one works for consensus, there will be issues decided with a majority and a minority vote. If you are on the minority side of the issue and have advocated well for your side, then you should accept the majority decision and support the board's decision. If you are on the majority side of the issue, give due respect to the minority views.

Leave disagreements at the board table. When the meeting is over, the debating is over until the next meeting. After the meeting it is time to rebuild the team spirit.

Ongoing development activities should be part of the plan for every board and every board member. Attend state and national conferences (like NCSHA's and NCSHB's), take part in boardmanship workshops and read pertinent literature.

There is no such thing as knowing all one needs to know about the complex job of governing an organization as complicated as an HFA. It often takes years to appreciate the basic workings of the bond issuance process, let alone the nuances of various programs or applicable laws.

➢Learn that the job deserves one's very best effort. Everyone comes to the board as an amateur, but each member must do the job in the most professional manner possible. Each member has volunteered for the job, and the pay, if any, is minimal.

But the governance of the organization demands the best job each member can do. If a member cannot offer that, they should let someone else have their seat at the board table.

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How not to begin a board career

If you are looking for ways to alienate yourself from the board team, here are a few suggestions that will guarantee it:

- Talk too much and listen too little
- Act as if you have all the answers for every issue
- Refuse to change your mind on any issue, no matter what the evidence
- Refuse to compromise
- Ignore advice from fellow board members
- Leak information from a closed board session
- Fail to prepare for the board meetings
- Publicly criticize a board decision you did not support
- Ridicule board decisions made before you came on the board

THE ROLE OF THE BOARD MEMBER

The job of a member of an HFA board team can be defined very easily in one sentence: ***You and your fellow board members are responsible for the whole organization and all that happens in it.***

That is both a legal and a practical way of looking at your job on the board. Your responsibility encompasses administration, staff, programs, finance, assets, success and failure of the HFA.

Even though the board delegates a major portion of the job to professional staff, the board never gives up bottom-line responsibility for the organization. Any doubt about that was largely erased by the principles inherent in the federal Sarbanes-Oxley Act (often referred to as "SOX").

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The Board sets policy

A board of directors has neither the time nor the ability to handle the daily management of a business as complex as an HFA. Instead, board members handle their responsibility through their governance or policy-making position.

A policy is a direction or course of action that a body will take. The board is a policy-making body that sets the direction and course of action the organization will take within its legislatively specified mission.

The board establishes policies that outline the board's parameters for how the HFA will operate to accomplish its legislatively determined mission. Then the board functions as observer, interpreter and evaluator of those policies. The board also modifies existing policies and creates new policies as it sees the need to keep the organization running well.

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If you know something about the history of your HFA, you probably know that it grew out of a state-wide need—usually a need for the financing of affordable housing for citizens of the state. The solution was to create a quasi-governmental organization that would continue to deal with the problem and fill the need.

The Executive Director is hired to manage

Although the first board of each HFA hired an executive director to manage the HFA in the early stages of the organization's history, those first board members were more actively involved in management because everything was new. But as the HFA matured, the board was able to assume its proper role as governor, not manager. With someone else handling the management, board members have time to be overseers, planners and advocates for the organization.

Even though that all happened long before you came to the board, for those HFAs where the board employs the executive director, the task of selecting/retaining an executive director is still something about which you will be concerned. The board places a tremendous amount of trust and authority with the executive director, and the executive director must continue to prove to the board that he/she is the right person for the job. Board members should adopt a written description of the job of the executive director and on a regular basis formally evaluate the executive director.

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The delicate balance of leading and delegating

Some board responsibilities cannot be delegated to others. However, a great deal of the work of the board must be delegated to a professional manager who has the time, skills and abilities to do the job.

Keeping in mind that the board is responsible for everything in the HFA, and looking at the delegation of daily management by the board in the purest terms, it can be said that:

The executive director's job is to daily do the board members' job for them.

One of the most difficult things a board member will do is make a sweeping delegation of authority to the executive director to manage the HFA, and then do nothing to interfere with that management except to monitor.

This confusing issue of how much the board does and how much the board delegates to someone else to do is the greatest cause of conflict on any HFA board. The reason for that is the impossibility of clearly defining what the board should do and what it should delegate to the executive director.

There are several ways a board member can deal with this confusion and keep things in perspective:

➢Do not look at this as a turf battle between the board and the executive director. The board and executive director must always function as a team and each team member has assignments. This is an issue of determining who does what best and then allowing that segment of the board team to do the job without interference from the other parts of the board team.

➢The board members' duties can be defined loosely as dealing with issues that affect the whole organization. The board sets parameters of how the system will operate.

The executive director's duties can be defined as developing and carrying out the functions of managing the organization within the parameters set by the board.

➢There are very few activities of the board team in which every segment of the board team is not somehow involved. For example, it is the board's job to establish an annual budget for the organization. However, the budget is most often prepared by the executive director and recommended to the board for approval. So the executive director does have an important role in the budget process even though it is strictly defined as a board responsibility.

➢Communication is the best prevention of confusion and conflict. Board members and the executive director must feel free to discuss any issue. All parts of the board team must feel free to express concern about who does what job.

➢The board never gives up ultimate authority for everything and everyone in the organization.

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Examples of who typically does what on the board team—

➢The board delegates staff management to the executive director, but the board gives final approval of all senior staff contracts.

➢The board hires the auditor to audit the financial records, but the executive director seeks bids for the audit and makes recommendations to the board for their final decision.

- The board creates policies for management of finances and approves borrowings, but the executive director actually structures and recommends financings, handles bond issuances, invests funds, makes sure the bills are paid and oversees the day-to-day financial situation.

- The board approves bids for major purchases, but the executive director recommends the bid be accepted and actually makes the purchase.

- The board is responsible for making a long-term plan for the organization, but the executive director will make recommendations and act as a resource through the planning process.

- The board approves a budgeted amount for maintenance and staff salaries, but the executive director actually determines the maintenance activities that will be carried out and the allocation of money to line staff.

- The board approves a budget amount for staffing, but the executive director determines the level of staffing necessary and what the staff will actually do.

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Board planning

By delegating management responsibility to the paid staff, the board leaves itself time for the important task of planning for the future of the organization.

Planning is not a frill, but one of the most important trusts given to the board. If there is one thing boards do not do enough of, it is planning.

Planning, in an age when dramatic change comes almost faster than one can comprehend, seems like an exercise in futility. But the very fact that change is so rapid is even more reason that every organization must have a plan to cope with that rapid change and the effects that change could have on the organization.

Failure to plan is planning to fail. Board members must be the visionaries for the organization. They should plan as far ahead as five years.

The board is generally responsible for long-term planning, and the executive director is responsible for developing a short-term (1-year) plan to carry out the board's long-term goals. But all planning for the HFA is a board team effort.

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Plan for planning

Long-term planning must be much more than an informal discussion about what the organization ought to be doing in the years ahead. Good planning that will set definite goals has to follow a very orderly and formal process.

A board member should expect to be involved in at least one significant long-term planning meeting per year. During this meeting, board members will help write a long-term plan or modify a previously established plan.

Each board member should be ready to merge their personal goals for the organization with the personal goals of the rest of the board team. Each board member should also be ready to work for a consensus with the rest of the planning team about the goals the board will set. An organization must have one set of long-term goals to shoot for.

The annual long-term planning session will probably include the board, executive director, senior staff, professional team and other resource people, and last as long as one or two days.

In that special planning meeting, each board member should be ready to set aside the limitations that they struggle with in monthly board meetings. Board members will be asked to dream about the future of the organization and then plan how to make those dreams reality over the next 5-10 years.

Planning is an exciting and vital board responsibility. Planning makes dreams reality for the HFA.

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It is a common misconception that a long-term plan once written is locked into place and not changed for the life of the plan. Rather, an HFA long-term plan should be a flexible and changeable document. An HFA written plan should be reviewed at least once a year and modified where necessary.

Long-term plan elements

The basic elements of a good long-term plan are:

- Do-ability—Actions can be taken to accomplish the plan.
- Flexibility—The plan can be modified over the years.
- Measurability—There are ways to identify accomplishment of the plan.
- Accountability—Completion dates and responsible parties are identified as part of the plan.

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Short-term planning

The executive director is generally responsible for writing a short-term plan that explains how the executive director and staff will implement the board's long-term plan for the year. The board also writes a short-term plan that outlines what the board's work will be for the year.

In other words, the board creates an annual calendar of board activities.

The short-term plan is a simple document that will include such things as plans for board meeting times for the whole year, committee activity, the annual meeting, election of officers and board development activities.

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Monitoring and evaluating

A board member is really a "Trustee" of the HFA. The State trusts you to make sure the HFA is operating the way it should—the way they have directed it to be run in the HFA statute. It is a board member's job to keep an eye on the progress of the organization for the State.

Of course, a board member can not watch every detail and every activity that takes place in the organization, because that would be a full-time job. The board member's responsibility is to monitor and evaluate "bottom-line" results.

For example, a board member can not and should not be in the office every day monitoring the work of the staff. But a board member can measure the effectiveness of the staff by looking at the progress made on the long-term plan and the executive director's annual goals. That is bottom-line evidence of the work staff is doing.

A board member will monitor and evaluate many things as a member of the board, but there are a few major ones—finance, executive director effectiveness, progress towards the HFA goals and the long-term plan.

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Finance monitoring

Finance is one of the most difficult items an HFA board member will have to monitor and evaluate, but it does not have to be an overwhelming task. A board member does not have to be an expert in municipal or corporate finance to do a good job—the board hires professional experts for that purpose.

Begin your monitoring with careful attention to the budget. The budget is the board's financial plan for the organization and deserves plenty of each member's attention. The budget will be prepared by the executive director and staff and presented to the board for approval.

When the budget is presented, board members must ask whatever questions are necessary for them to gain a reasonable understanding of this financial plan—basically, where the money is coming from and where the money will be spent.

Monthly or quarterly financial reports to the board are the windows members use to monitor how well the executive director and staff are following the financial plan the board approved when the members voted on the budget. If a board member does not understand the reports, the member should ask the executive director for an explanation.

Board members do not have to know everything about finances, just enough to assure them that the money is coming in and going out according to the budget plan.

Financial reports should cover both the revenue side of the budget and the expense side of the budget.

On the expense side, a board member should understand what was budgeted, what has been expended to date, the variance between the spending plan in the budget and what is actually being spent, and the reasons for the variances.

The same goes for the revenue side. How much money was anticipated at this point in the budget year? What has actually come in? What is the variance? What is the explanation for the variance?

If the HFA has utilized guaranteed investment contracts, liquidity (standby bond purchase) agreements for variable rate demand bonds or hedge (swap) agreements, the board members should receive periodic reports on the status of the counterparties and any other appropriate criteria (such as the market or termination value of hedges).

Another step for the board to do a complete job of monitoring the financial status of the organization is an annual audit of the books by an outside auditor. This is a required procedure for most HFAs, but it is much more than just a mandate. It is also one of the board's best protections against financial misconduct or mismanagement—and the key safeguard required by the federal Sarbanes-Oxley Act for all SEC registered companies.

When the auditor completes the annual audit, it will be delivered to the board with the auditor's findings. Board members should feel free and, in fact, obligated to discuss the report with the auditor and get a basic understanding of the strengths and weaknesses of the financial management reported in the audit (usually auditors prepare a separate "management report" for the board to address any issues the auditor uncovers). It is also often helpful to have the auditor explain the balance sheet and income statement line items as some of them are

counterintuitive. Accounting standards have become so arcane (and in some cases illogical) that board members should be sure to ask the auditors about accounting rule anomalies and their impact on the HFA's financial results.

Unfortunately, in some cases the accounting rule anomalies result in a distorted view of the actual cash flow position of an HFA, and HFAs may need to maintain a separate set of financial reports to enable the Board to meet its oversight responsibilities.

The final step for the board to do a complete job of monitoring the financial operations of the HFA is to review reports by the national bond rating agencies which concern the HFA. Every time an HFA issues bonds, it obtains a bond rating which is accompanied by a rating report. The rating report provides a summary of the overall credit analysis of the bond issue based on the actual—and expected—cash flow position of the HFA.

In addition, the rating agencies usually produce annual reports about HFAs as a group. Those reports contain many charts which rank HFAs by various financial criteria and can help board members evaluate their HFA in light of its peers.

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Ineffective ways for a board of directors to monitor finances include—

➢Reviewing a list of the bills paid. This is not only unrealistic for the board but fails to look at the big financial picture which is really the board's job.

➢Relying on a finance committee. The full board is responsible for the financial integrity of the organization and a committee should be used only to help the full board understand the financial picture, not do the job for the board.

➢Board members signing checks. Even if this were practical, it is not adequate as a financial monitoring system because it does not provide a view of the big picture of the organization's finances.

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Evaluating the Executive Director

Executive director effectiveness is another important area for board members to monitor and evaluate. Remember, a board member is responsible for everything in the organization and only delegates management to the executive director. A board member does not give up his responsibility when the board delegates, so it is up to the board member to make sure that management is being handled properly.

Board members cannot follow the executive director around all day to see how the job is being done, so the best way to evaluate and monitor executive director effectiveness is through a formal evaluation, preferably annually in conjunction with the executive director's annual compensation review.

The format and procedure for that evaluation must be worked out by each board, but it is important that it be based on the executive director's written job description and that each board member understand what is appropriate and what is inappropriate for the executive director evaluation.

Remember that you are measuring executive director effectiveness on bottom-line results. Is the board getting a good flow of information and recommendations from the executive director? Are the finances of the organization reasonably stable? Are its programs working efficiently? Is the staff knowledgeable and effective? Is political and community support strong? Is the organization making progress towards its long-term goals? Is the executive director working within the job description dictated by the board? Has the board received many complaints from those the HFA serves?

A few good rules for an executive director evaluation . . .

1) Although 360° evaluations are in vogue, be cautious if the staff is asked to evaluate the executive director. Only senior staff should participate. Line staff usually do not know what the board expects of the executive director. Often staff members cannot be unbiased when evaluating their boss.

2) Consider formal evaluation a positive effort to communicate better with the executive director, not a faultfinding mission to document errors. The evaluation gives the board and executive director an institutionalized system to communicate about how to make the organization run better. A board member should search as much for what the executive director does well as for what the executive director is doing wrong.

3) Be ready to reward good performance and demand correction for poor performance.

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Board Members as advocates

Because board members serve as volunteer leaders of an HFA, they qualify as the best advocates for the organization. Paid staff have a built-in self-interest no matter how committed they are to the mission of the organization. But volunteer board members have the purest of motives—service. Board members are also community leaders and hold a good deal of influence in the community, prime qualities for being advocates.

A board member's advocacy for the organization will take several different forms—lobbying lawmakers, communicating with the community and those you serve about the needs and plans of the organization, and carrying out public relations activities for the organization.

A board member's advocacy efforts will generally be part of a planned board effort. Remember, a board member cannot speak for the full board, but can speak about the board's position on issues. A board member can also promote the programs of the organization.

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Special expertise

In addition to community or industry influence, board members often bring special personal expertise to the board.

Keep in mind, however, that a board member is not appointed to be a specialist for the organization, but rather to apply his general experience and leadership to its governance. Exercising one's special skills must be done in a cautious manner.

When a board member offers expertise to the board or to the executive director, he should not be offended if the advice is not accepted. Both the board and the executive director must work in the context of the whole organization, not just one area of need.

When a board member uses his expertise, he must be cautious not to misuse his power as a board member to pressure the executive director or other staff to accept help.

The bottom line—A real expert knows the answers, but also knows when to offer those answers.

BOARD POLICIES

Ask any board member to define the board's job and you'll likely hear, "The board's job is to set policy." Ask for a definition of policy and you'll probably get no more than a confused look.

For board members to do their job well, they must understand policy because that's where they'll be spending their time—making policies, wrestling with policy issues, interpreting policies, monitoring policy effectiveness, enforcing policy, setting direction for the organization through policies, protecting the board and the organization through a good set of policies.

Policy is a written statement of the process and procedure for handling a specifically defined issue.

A good set of written board policies . . .

- informs everyone of board intent, goals and aspirations.
- provides transparency
- prevents confusion among board members, staff, the professional team and the public.
- promotes consistency of board action.
- eliminates the need for instant (crisis) policy-making.
- reduces criticism of the board and management.
- improves public relations.
- clarifies board member, executive director, professional team and staff roles.
- gives the executive director a clear direction from the board.
- provides legal protection to the organization.

Just entering a motion into the meeting minutes that says the board will follow a particular direction is not policy. Relying on board tradition to be board policy is not enough. Determination of how the board handled an issue the last three times is not policy. Simply following state law is not policy.

Board policy is a carefully designed, written general statement of direction for the organization, formally adopted by a majority vote of the board at a legally constituted board meeting.

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Board policy is not . . .

An HFA's bylaws are not board policies. Bylaws are a higher and more permanent set of guidelines for how the board will operate. They are usually harder to change than board policies and do not cover the broad scope of how the organization will operate.

Laws are not board policies. There is little need to repeat in board policy those statutes that already have the force of state or federal law unless the board policy spells out some special manner in which the board will implement or comply with a law. For example, if state law prescribes when the HFA's fiscal year will begin, there is no need to repeat that law in a board policy.

A board should "develop" policy and not just "write" policy. Good policy grows out of a lengthy process of studying the issues and needs, gathering facts, deliberating the issues, writing the policy and reviewing the policy periodically.

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Developing policy

Policy development follows definite steps.

1) Identify the need. Unfortunately, many board policies are a result of a problem or even a crisis rather than a result of careful planning and foresight.

A good way to identify the need for particular policies is to anticipate problems and write policies before the problems occur. Study the policy manuals of other organizations. Monitor developments in private corporate governance, especially in reaction to the Sarbanes-Oxley Act. Pay attention to what's happening with other HFAs across the nation. If an organization similar to yours ends up in litigation, your HFA should review its own related policies. Learn from the mistakes of others.

2) Gather the facts. Most policies will grow out of recommendations from the executive director. Your executive director is in touch with trends, problems and issues that demand policy statements from the board.

Depending on the nature of the policy, a board member may want to ask for public/member input, seek legal counsel or even hire a consultant to help develop a policy.

3) Deliberate the issue. This is where board members' perspectives as representatives of the community/industry come into play. They know community and industry standards and needs. Careful deliberation of a proposed board policy should include several considerations:

Is the proposed policy . . .

- really necessary?
- consistent with the HFA's purposes?
- within the scope of the authority of the board?
- consistent with local, state and federal law?
- compatible with the HFA's other policies?
- practical?
- broad enough to cover the subject completely?
- enforceable?
- affordable?

4) Write the policy. The actual wording of the policy is best left to the executive director or a task force of board members and executive director rather than the full board struggling with wording. The actual policy may come to the board and back to committee for revision several times before it's finalized. Making good policy takes time.

Final approval of the written policy is a board responsibility and should be done at a formal board meeting.

5) Review your policies periodically. Although a board writes policies to be durable, policies do go out of date, and an out-of-date policy can be as bad as having no policy at all. Periodic (preferably annual) review of board policies can help keep policies current and at the same time keep board members current about board policies.

To make board policies usable, they should be collected and codified in one manual. The manual makes the process of learning board policy simple for new board members and it makes the application and interpretation of policies easier.

A manual also makes the process of review and update of board policies much easier. An all-at-once approach to revision is much too cumbersome for any board. An easier way is to give every policy a date and then make sure the board or a committee of the board examines each policy on or before that date each year. That makes it an ongoing process and much less overwhelming.

All changes in the policy manual should have full board approval.

Examples of Policies

The list below is not intended as a comprehensive checklist of all the policies a board should have. These are simply categories for consideration and a few examples of the types of policies that fall under each category. (Those policies effectively mandated by the federal Sarbanes-Oxley Act are followed by "SOX").

➢**board operations**
-board/executive director relationship
-meeting procedures
-executive session guidelines
-methods of adopting policies
-travel/conference policies
-committees
-board member buying bonds
-expense reimbursement
-ethics/conflicts (SOX)

➢**programs**
-confidentiality
-service goals

➢**finance**
-professional selection
-conduit bond issuance
-investment policies
-swap policies

➢**community/industry relations**
-use of HFA facilities
-public solicitation and advertising
-news media relations
-transparency

➢**administration**
-authority delegated to the executive director/other staff
-whistle-blower rules and protection (SOX)
-record retention rules (SOX)

➢**business**
-service contracts
-purchasing
-budgeting
-insurance

THE EXECUTIVE DIRECTOR'S ROLE

Just as there is often confusion about the role of a board member of an HFA, there is also often confusion about just what the executive director does in the organization.

The executive director is first an employee of the board (in most states), but the relationship between the board and the executive director is not the typical employer/employee relationship. In most businesses, the employer is the expert in the business and probably knows more about it than the employees. This is not true of HFAs.

The HFA board is selected to make sure the HFA operates well and in the best interest of the State. But board members are not selected for their expertise in managing a housing finance agency. Thus the board must hire a professional administrator—the executive director—to do the board's work.

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Executive Director's job

The role of the executive director can be defined as daily doing the board members' management job for them, a very natural and efficient way for a board to fulfill its mandate.

After the board hires as executive director a professional whom they can trust to do their management job, the board should delegate all daily management responsibility to the executive director. The board's job then becomes one of carefully monitoring the executive director's work to make sure that what the board wants to happen is really happening. But it is not the board's job to interfere with daily management.

The board's delegating/monitoring relationship with the executive director is very difficult to master because it is so unusual. But a citizen board governing a professional administrator is a good system. It has the best elements of both worlds—a board of governors who represent the best interests of the state and its constituents, and a professional administrator who can make the organization run efficiently within the parameters set by the board.

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Executive Director is part of the Board team

The executive director is much more than just an employee of the board. The executive director is a valuable resource to the board on all issues and usually the leader and expert on most issues that come before the board. The executive director should be an advisor, consultant and partner to the board at all times.

The executive director should sit at the board table during all board meetings and should be expected to make well-supported recommendations on all issues that come before the board. The executive director should be expected to take part in board deliberations whenever necessary to help the board make the best decisions.

There should rarely be an occasion when the board meets without the executive director as part of the meeting.

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Executive Director handles day-to-day management

The executive director is charged with virtually all of the day-to-day HFA management and must be clearly understood by both staff and board to be the authority in matters of routine management.

The executive director is responsible to:

- Implement the policies of the board.
- Represent the organization in negotiations, public relations and other public events.
- Maintain strong legislative liaisons.
- Hire, direct, supervise, educate, evaluate and discipline staff.
- Prepare the annual budget for approval by the board.
- Handle bond issuances.
- Manage the finances of the organization.
- Oversee the organization's programs.
- Plan the annual operations of the organization to fit into the long-term plan of the board.
- Keep the board informed of programs.

- Assist the board in the governance of the organization by informing the board of the status of the organization and recommending policy direction for the board.
- Stay abreast of industry developments and keep the board up-to-date.
- Remain current in knowledge of the organization and appropriate methods of operation.
- Prepare an annual report of the progress of the organization and submit that report to the board.
- Monitor compliance with federal, state and local laws and program rules.

When a good executive director does a thorough job of managing the organization, board members may become concerned that they are giving up their job and becoming a "rubber stamp" for the management.

A "rubber stamp" board is one that simply approves—without good discussion and deliberation—all recommendations from the executive director. A "rubber stamp" board does not thoroughly monitor and evaluate the progress of the organization.

A board that does a good job of delegating management takes nothing at face value, but expects the executive director to supply options and alternatives, and expects to have plenty of time for good deliberations on all issues.

A board doing its job right will have good systems of monitoring and evaluating the progress of the organization and demand accountability from those who have been directed to manage it.

When the executive director does a good job of facilitating the board's work, the board has time to concentrate on the big policy and planning issues facing the board.

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Executive Director's reporting responsibility

Although the board delegates to the executive director a great deal of responsibility for management of the organization, the board retains ultimate responsibility for everything that happens in it. Therefore, board members should expect a continuous flow of information from the executive director about what the executive director is doing to operate the organization.

It is the right and responsibility of the board to request from the executive director all information necessary to fulfill the board's governing responsibility. It is the executive director's obligation to report to the board accurately and completely about how the organization is being managed—problems, plans, progress and any other information the board needs to govern.

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Executive Director's boss is the full Board

The executive director is responsible to the whole board, but not responsible to each board member. When delegating to the executive director, the board must speak with one voice. When giving direction to the executive director, the board must speak with one voice. When asking for accountability from the executive director, the board must speak with one voice.

Individual board members have no power to make demands of the executive director and should avoid trying to exercise power they don't have. This, of course, does not rule out individual board members asking the executive director for clarification about issues facing the board or discussing with the executive director concerns that individual board members may have.

But it does rule out individual board members making demands of the executive director or giving orders to the executive director.

The executive director cannot serve many masters and still manage the organization efficiently.

THE BOARD'S RELATION TO STAFF

All HFAs have staff other than the executive director—deputy executive director, finance officer, program (department) heads and line staff. Understanding the relationship of the board to those other staff members is vital to maintenance of a smooth running organization just as it is to any business.

A poor understanding of the board/staff relationship causes confusion and chaos.

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Board has only one employee

Technically, the board approves employment of all staff, makes contracts with staff, and approves pay and major working conditions. But the board/staff relationship cannot be the traditional employer/employee relationship.

In practice, the board has only one employee, the executive director, because that is the most efficient way to run any business. Employees need to clearly understand who gives the orders, who is accountable to whom and who has responsibility for what. So the board creates a chain of command that sets up clear lines of authority and accountability.

The chain of command is designed to make things work, not to hinder communication. It is, in fact, a communications system in itself.

The board hires the executive director to be their expert in management of the organization and that includes managing all other staff. The board delegates the responsibility for managing staff to the executive director. The executive director then hires all other staff, and has complete responsibility for supervising, evaluating, rewarding and disciplining all other employees. The executive director is accountable to the board for the performance of all other staff.

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Management chain of command

Under a chain of command structure, the board has no direct responsibility for day-to-day supervision of staff other than overseeing the executive director. Board members have no authority to issue orders to line staff or make demands of line staff except through the executive director.

Under a chain of command structure, the board has no direct responsibility for assessing staff performance other than that of the executive director. The executive director should be expected to give the board regular reports about staff performance so that the board can be assured that the work of the organization is being done well. But the board does not formally evaluate line staff.

Under a chain of command, the board does not usually act on complaints from the line staff.

Staff members often fail to understand or choose to ignore the chain of command and go around the executive director to take concerns and complaints directly to the board or to individual board members. When such a "short circuit" occurs, it is the board member's responsibility to remind the staff member about the chain of command and the proper channels for such concerns or complaints.

Problems are always best resolved at the lowest possible level on the chain and should be directed there. Any concerns or complaints that come directly to board members should be reported to the executive director for resolution.

When board members fail to adhere to the chain of command, the result is damage to the efficient operation of the organization. The executive director's authority to manage staff is severely compromised. The executive director can't be held accountable for staff performance if the board is going to manage staff. Staff morale will be damaged. Staff will not have a clear understanding of who is in charge and to whom they will be accountable.

Once a short circuit between board and staff is allowed to happen, a precedent is set that will be hard to break. Staff will believe they can come to the board with every issue. The executive director becomes an ineffective figurehead without real authority.

On the other hand, the board must not close its eyes to obvious signs that the Executive Director is doing a poor job of hiring or managing staff. Excess staff turnover or obvious executive director domination/mistreatment of senior staff is a classic indication that there

may be problems. Some HFAs have even established an independent system—such as an ombudsman who reports only to the board—to provide employees a confidential method of airing grievances. Such an independent system is clearly the best way of assuring compliance with the "whistle-blower" protection rules of the Sarbanes-Oxley Act.

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Board/Staff relationship

Acceptance of the chain of command does not mean that a wall is placed between the board and line staff. Staff, the executive director and board members must still view themselves as part of one team and that team has one mission to accomplish—the HFA's purposes.

Each part of the organization team has special assignments in the team effort that complement the special assignments of the other members of the team. But the team members do not work in isolation.

Board members may often work with the executive director and staff members in committee settings. Board members, the executive director and staff must all be part of the long-term planning process. Staff members will frequently make reports at the board meeting. Board members, the executive director and senior staff should get together for organization social events, because those events can be powerful team-builders.

A board member should show concern for the well-being of staff. The board should be concerned about retention of good staff by budgeting for good pay and benefits. The board should give recognition of good staff performance and say thanks to staff through board action.

But it is imperative that board members base any relationship with staff on the chain of command. Social occasions cannot be an excuse for discussing complaints about the organization. Staff appearances at board meetings should not be an excuse to appeal to the board for a program that the executive director has already vetoed.

THE BOARD'S RELATION TO ITS PROFESSIONAL TEAM

All HFAs employ third-party professionals to assist the HFA in carrying out complex programs, and accessing the national capital (bond) markets. Understanding the relationship of the board to those professionals is also vital to the maintenance of a smooth running organization.

A poor understanding of the board and professional team relationship not only creates confusion, but it may cost the HFA in its borrowings and even give rise to legal problems.

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Professional team members

Typically, an HFA's professional team includes at least the following:

- General counsel
- Investment bankers
- Bond counsel
- Accounting firm
- Bond trustee

Some HFAs also have a financial advisor, and may have other specialists (*e.g.*, public relations, lobbying, swap advisor).

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Relationship to the board

Board members need to understand the relationship of each professional to the board—and to the executive director.

Unlike line staff, which report only to the executive director, some members of the professional team technically report (and are responsible to) the board. However, the entire professional team must daily work with the executive director.

In addition, the legal relationship of the professional team members differs:

- General counsel and bond counsel have a confidential client relationship with the HFA itself as a legal entity, and thus the board as its governing body. Technically, they are not counsel to the executive director or any individual board member—but to the organization, whose responsible governing body is the board.

- The investment bankers have a more complicated relationship with the HFA. Legally, an investment banker generally has no fiduciary or special legal obligation to the HFA. Practically, they structure bond issues to obtain the lowest reasonable bond rates, yet have to resell the bonds so they have an incentive to suggest higher rates. Ideally an investment banker should have a high level of trust with the board and the executive director.

- The HFA's accounting firm must be "independent"—which means it follows the industry standard accounting rules regardless of the results for the HFA. The Sarbanes-Oxley Act underscores the requirement for independence.

- The bond trustee is a fiduciary for—and represents—the bondholders, not the HFA. Yet practically it is also the HFA's operational bank for bond programs.

Board members should feel free to consult with the professional team, particularly counsel on legal matters. Yet board members must be careful to recognize—and respect—that the executive director is charged with daily management. Board members' consultations with the professional team should be restricted to board-level policy and program/finance decisions, not day-to-day matters.

Board members must be careful not to abuse their relationship with the professional team, such as asking for free advice on personal matters or soliciting gifts or political or charitable contributions.

Professional Team Selection

There are numerous methods of selecting or electing to continue the professional team, and they differ by team member.

Continuity in the professional team is normally an asset—unless the HFA staff has sufficient expertise to handle the professional matters themselves, in which case the professionals are not used as much for advice as to simply carry out a function.

HFA professional team review practices range from periodically (e.g., every two or three years) going through a formal "request for proposals" for every member of the professional team, to going through such a process only if the HFA becomes dissatisfied with a professional's performance. The underwriters are most likely to be subject to a periodic selection process; the trustee and general counsel are least likely. With respect to accounting firms, the Sarbanes-Oxley Act principles suggest that, to insure independence, either the accounting firm itself or the partner in charge of the account should be changed periodically (every three to seven years).

In some states the selection process becomes politicized—board members must be careful to make sure that each member of the professional team has the ability to handle its responsibilities for the complex challenges of HFA programs. Less than competent professionals will not only lessen the effectiveness of the HFA but can create liability for the HFA, and possibly even create personal liability for board members.

OFFICERS OF THE BOARD

Any group that expects to accomplish anything must have leaders to keep the group organized, help the group discipline itself, prod the group to move ahead, and facilitate the work of the group to make good decisions. That's the function of all board officers.

HFA boards may have some or all of the officers described below. Boards grow from different traditions and thus have different ideas about the type and number of board officers they need. Often the HFA statute will require certain officers. The job responsibilities of a specific HFA's board officers may vary from those described below.

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Board Chair

Someone has to be the board's leader and that is the board chair or president. The job description for the chair is relatively simple, but the job can be complex.

First of all, the board chair must be understood to have no power beyond that of any other board member unless the full board has granted that power to the chair. For example, the board may delegate specific powers to the board chair, such as managing board meetings, speaking to the public on behalf of the board or signing contracts on behalf of the board.

Any power exercised by the board chair must first be granted by the full board in the bylaws, in a policy or in commonly accepted and understood practice of the board. In other words, the board chair does not speak for the board unless the full board has formally or informally delegated that privilege to the chair. Traditionally, the board chair has several duties:

Planner—The chair works with the executive director to plan the meeting agenda as well as the manner in which the meeting will be conducted. The chair keeps an overall view of the board year and ensures that the board is completing duties mandated by board policy or by law.

Facilitator—The chair's job must be viewed as more of a facilitator than a controller of meetings. The chair begins the meetings on time, directs the board through the agenda and attempts to adjourn the meeting on time.

As facilitator, the chair ensures that all board members have an opportunity for fair participation, attempts to get all sides of an issue fairly exposed and moves the board to action on the issues.

Delegator—The chair traditionally has the power to appoint board members and others to committees with board consent. To do that, the chair must have a clear understanding of each board member's skills, strengths and interests so that appropriate assignments can be made.

It is also the chair's responsibility, as delegator, to make sure that committee assignments are clear and to hold the committees accountable to do the job assigned. The chair is often a member of every committee.

Liaison—The chair must be able to interpret board needs and concerns to the executive director, and executive director needs and concerns to the board. In addition, the chair offers personal support and counsel to the executive director and serves as a sounding board for the executive director.

Team builder—The board must always function as a team, and it is the duty of the chair to foster the team concept among board members. When there is danger of damage to the team structure, the chair must meditate, counsel and discipline fellow board members to keep the team intact.

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Vice-Chair

The vice-chair of the board traditionally serves as the backup for the board chair. However, the vice-chair is usually assigned additional specific duties such as chairing a committee, taking charge of board development activities or preparing the annual membership meeting.

The vice-chair works with the chair to stay current on issues and methods of board operation to be able to assume the chair's duties if the chair can't perform the required function.

The vice-chair is often considered the logical successor to the chair's position at the end of the current chair's term.

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Secretary

In many cases the executive director is also the secretary of the board, often directed by the HFA law.

Although technically the secretary is responsible for taking minutes of board meetings, normally the minutes of meetings should be taken by a staff member and not the board secretary. All members of the board need to be able to participate in board meeting deliberations and contribute their expertise. But the board secretary cannot do that well while taking the minutes of the meeting. The secretary's job is really that of overseer to be sure the job is done correctly and that the minutes of all meetings are safeguarded for the future.

Safe care and maintenance of correspondence and other historical documents of the HFA are also the responsibility of the board secretary.

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Treasurer

The treasurer's job is also one of overseer. Although the chief financial officer usually manages the finances of the organization, the board treasurer is responsible to ensure that adequate financial records are kept, accurate and timely financial reports are delivered to the board and an audit of the organization's finances is completed annually.

The treasurer may also be asked by the executive director to assist in preparation of the budget to be submitted to the full board and to help interpret financial reports to the full board.

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Elections

Actual processes for electing board officers vary widely, but whatever system an HFA's board uses, it must be a serious effort to place the best leaders of the board into the position of leading the board. It cannot be a popularity contest, a struggle between factions for a power position or just a "whoever will say yes."

Not all board members are suited to be or have the skills to be a board officer. Poor selection of the leadership can result in a poorly functioning board.

Board officers, particularly the board chair, must be well respected by the rest of the board, must be willing to give the extra time necessary to carry out the extra duties of the office and must have strong leadership skills. Officers should also be board members with some experience on the board.

If a board member is asked to be a candidate for an office, the member should consider carefully if they have the extra time it will take as well as the leadership skills to lead the board.

BOARD COMMITTEES

The many and complex issues which must be addressed by an HFA board cannot always be handled efficiently by the full board. Many of those issues may be handed to board committees for study and recommendations to the full board.

At some time in service on an HFA board a member will be asked to serve on at least one committee and need to understand the nature and purpose of committees. Committee work is a good place to offer any special expertise a member may have, but service on committees is not limited to experts on the committee subject. Committee service is a good way for a member to learn more about the organization by focusing on special issues.

Sometimes committee members are selected from people outside the board so that additional expertise can be utilized by the board through the committee. Involving nonboard members also opens a new avenue of communication with the community.

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No power of authority per se

Whatever the name or type of committee, the only purpose of that committee is to extend the work of the board. Committees are not autonomous groups with loose connections to the board, but are simply extensions of the board and always responsible to the full board.

Committees have no power or authority beyond what is granted to them by the full board. The only action committees can traditionally take is to study an issue assigned by the full board and make recommendations to the full board about the assigned issues.

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Accountability

If an HFA's committee system is well defined and controlled, and the committees are being held properly accountable, the full board will receive regular reports from each committee. The committee reports will explain what the committee has been doing for the board and make recommendations for board action.

Board members not on the committee should feel free to ask questions and get clarifications from the committee members, but avoid repeating the work the committee has already done. The purpose of the committee is to save time for the full board. If the full board repeats the committee discussions after the committee reports to the board, the board has not saved time but rather doubled the time spent on the issue.

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Types of Committees

Most HFA boards have standing committees or permanent committees that are described in the bylaws of the organization and function year round. As certain important issues arise, the board may also appoint temporary or "ad hoc" committees to study those issues for the board.

Because the primary purpose of an HFA is financial, the audit committee is particularly important. If possible at least one of the board members on the audit committee should be experienced in financial accounting, such as an accountant or banker.

At certain times, the board may meet as a committee of the whole. The difference between a meeting of the board as a committee of the whole and a regular board meeting is that the board is focusing on one subject in the committee mode.

Regular board meetings do not allow time for extensive discussion of one issue, so the board meets as a committee of the whole to give itself that time for in-depth discussion. Formal action on the issue will usually be delayed until the regular board meeting.

Some boards may also have an executive committee which is a committee in a class all its own. The executive committee is usually composed of the officers of the board and the executive director. This committee often has limited powers to act for the board in emergencies, but should have all actions ratified by the board at the next regular meeting.

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Committee member responsibility

A board member should approach committee meetings as seriously as the member approaches the regular board meetings. Prepare for the meetings, attend the meetings and take part in the discussions. If a board member has an assignment from the committee, the member should complete it in a timely manner. Remember, committees are an extension of the board.

When a board member is appointed to a committee, it is the member's responsibility to understand the mission of the committee, when and where the committee meets and the names of other members of the committee. The members should also examine the history of the committee and the minutes of their meetings for at least the past year so that they are up and running with the committee as soon as possible.

A board member should help the committee stay responsible and accountable to the full board. Although committee meetings are usually not as formal as a full board meeting, they should have a distinct structure, agenda and goals. When the committee completes its meeting, there should be a clear result of the meeting that can be reported to the full board. Committees are a valuable extension of the board, but only if they work in an orderly, timely and accountable fashion.

BOARD MEETINGS

Board meetings are the place most of the board's work is done. What is done in an HFA's board meetings reflects the attitude of the board about the organization and shows how well the board team operates.

What board members do in meetings usually makes the difference between an effective or an ineffective organization. Poor meetings can alienate staff, damage the board team, waste the time of the board members, cause turmoil and actually hamper the effective operation of the organization.

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Responsibility for good meetings

A primary function of the board chair is to run the meetings and keep the board moving toward good decisions. However, it is **each board member's responsibility** to:

- attend all meetings.
- prepare well for meetings.
- take part in all discussions.
- do whatever possible to cooperate with fellow board members to make meetings work.
- understand the basics of parliamentary law as well as state open meetings laws if they apply to your organization.
- know and follow traditional meeting practices of the board.
- learn the art of compromise with other members of the team.
- learn the art of listening and merging your comments with those of the other board members.
- work towards team consensus on issues before the board.
- focus all deliberations on the ultimate purposes of the organization and the best interests of those you serve.

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Meeting preparation

Each board member has a strong obligation to prepare well before any meeting. If each board member prepares well ahead of time, board meetings will be shorter and almost always more productive.

The board meeting agenda packet should be sent to each board member several days—preferably a week—before the meeting. Each board member should carefully read the agenda and all agenda-related materials. Ideally the agenda will indicate items requiring a vote. If a member has questions, the member should call the executive director for answers prior to the board meeting. Holding questions until the meeting will delay the progress of the meeting.

Each board member should also understand what is expected of them at the meeting and prepare to meet those expectations. Which agenda items will require a vote? Which ones will require discussion and input from all board members even though a vote is not taken?

To make good decisions about some issues, a board member will often need to seek input from some of the member's constituents or others in the community or an industry.

It is rarely safe for board members to assume they know the community or industry attitude about an important issue. Board members are the connection between the community or industry and the organization and are appointed to govern the organization for the community. They need to seek community or industry views regularly.

Even though board members should research issues and prepare to discuss those issues, it is inappropriate for them to decide how they will vote on any issue before the board meeting or to promise constituents they will vote either for or against an issue before they get to the meeting.

A board member's decision should be made only after deliberation in the meeting with other members of the board team when all sides of the issue have been explored.

Carefully scheduling one's own calendar so that board meetings are a high priority and planning carefully to get to board meetings on time is also very important. When the team is short one or more board members, there is danger that all sides of the issues will not be explored and all interests will not be represented. The board's effectiveness and productivity suffer.

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Meeting rules

Board meetings are much more than a gathering of the board team to chat about the organization. Board meetings require careful planning and will be conducted according to the plan outlined on the prepared agenda.

The meeting will be conducted according to established parliamentary rules that should be respected by all board members. Whether the HFA's bylaws specify that the meeting will be run by Robert's Rules of Order or some other parliamentary procedure guide, that set of rules is intended to set a tone that is businesslike and courteous, allows for ample discussion of the issues, but does not allow the discussion to get out of control.

When there is a disagreement among board members about the way to proceed, they should consult the parliamentary guide specified by the HFA's bylaws. A board member should have a basic understanding of parliamentary rules so they can be a part of the process of moving efficiently through a good meeting agenda.

However—parliamentary rules are not intended to impede the meeting process, but simply to ensure that the rights of all board members are protected and meetings move towards action. An HFA's parliamentary procedures guide is simply a resource to consult when the meeting gets stalled. Using parliamentary rules for the sole tactical purpose of impeding the meeting process or cutting off reasonable discussions is unethical and detrimental to the team atmosphere.

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The meeting begins

Board members should do their part to make sure that board meetings begin on time. A meeting that begins on time sets a businesslike tone for the meeting. A meeting that begins late sets a tone of sloppiness that will likely be carried through the remainder of the meeting.

If too many board members are late or absent, a quorum may not be present and the board cannot conduct business. A quorum is the number of board members—usually one over half of the elected board members—that must be present to conduct official business of the board. Any action taken by a board that does not have a quorum present is usually legally invalid and certainly not in the best interest of the organization.

Arriving on time for meetings also demonstrates respect for fellow board members who have made the effort to get to the meeting on time.

Most board members like to socialize with fellow board members. That's one reason board members take the job in the first place: to be able to socialize with other community and industry leaders. That socialization helps to build the team spirit.

But the socialization needs to be done before and after the meeting and kept to a minimum during the meeting. The meeting should have a friendly businesslike tone always focused on the agenda item at hand.

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Board agenda

The board meeting will run according to an agenda plan prepared by the executive director and the board chair. The purpose of the agenda is to specify a clear direction for the meeting, and the board chair will ask the board to formally vote to approve the plan at the beginning of the meeting.

When the board approves a written meeting agenda, board members are agreeing to discuss only those issues on the approved agenda.

Even though the board chair and the executive director prepare the agenda, the agenda is the board's plan and all board members have a right to place issues onto the agenda by bringing those issues to the attention of the executive director or the board chair.

However, anything a board member wants on the agenda should be requested well in advance of the board meeting. Placing issues on the agenda at the last minute is not appropriate because the rest of the board team has not had time to consider the issue and will not be ready to discuss it in an informed manner.

Many issues that get on the agenda at the last minute are issues that could be handled outside the meeting more efficiently. There are certainly issues that come up at the last minute that need to go on the agenda for discussion, but they should be very rare.

Often routine reports and matters which are included in the board meeting agenda packet will be separately identified in a "consent agenda" and handled as a single non-controversial item at the meeting.

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Board minutes

At each meeting the board members will be asked to approve the minutes of the previous meeting. This is a portion of the meeting a board member will not want to take lightly.

The meeting minutes, when approved by a formal vote or by consensus of the board, are the official legal record of what happened at the board meeting. New board members should examine the minutes of the board meetings for at least the past year. That will give them a good perspective on the issues the board has faced and how the board handled these issues.

Every board member has a right to ask the board to correct errors in the minutes before the board accepts the minutes as the true record of the previous meeting. The board chair will ask if there are any corrections to the minutes before the board votes approval.

Individual board members do not have a right to demand that their reasons for voting a certain way or their detailed views about an issue be recorded in the minutes. Every board member should have full opportunity to express a viewpoint prior to the vote on any issue, so there's no good reason to extend the debate into the voting process. A board member's "yes" or "no" vote will represent his views on the issue.

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Board reports

During the meeting, board members will likely hear reports from committees, the executive director and staff. The reports will provide the background and information the board needs to deal with the issues on the agenda for the rest of the meeting.

Often the reports will conclude with a recommendation for board action. If those reports were in written form and sent to the board members prior to the meeting, board members should be prepared to take action on those reports without having them read during the meeting. Those making the reports during the meeting will simply highlight information, clarify issues, and answer questions.

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Making motions

Any board member can bring business before the board by making a motion. A motion is a formal request or proposal for the board to take action.

To make a motion, the board member simply addresses the chair and states "I move that . . ." and state the action the member wishes the board to take. Most motions require that another board member support the request for action by seconding the motion.

Once the motion is seconded and restated by the chair, the board begins discussion of the motion. Some motions do not require discussion.

By requiring a motion on an issue prior to discussion, the board discusses only those items on the agenda and stays focused and on track. When the discussion is preceded by a motion, the chair can insist that board members limit discussion to the motion on the table.

Motions usually come from two major sources, committee reports and executive director recommendations, but board members may make motions at any time in accordance with the HFA's parliamentary guide.

After a motion is made and seconded, there should be plenty of time to discuss the pros and cons. But when discussion jumps from subject to subject and fails to focus on the issue at hand, the result will be disappointing to everyone.

The board chair should make sure that all the issues that need to be discussed get on the agenda and board members should take all the time they need to discuss those issues. But the chair and all board members must work to kept the discussion moving towards a decision—that's the reason the issue is on the agenda.

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Voting

Once the motion has been discussed thoroughly, the chair will call for board members to vote on the motion. A board member may be asked to vote by saying "aye" (yes) or "nay" (no) in a voice vote, by show of hands or in a role call vote. Each member's yes or no vote will be recorded in the meeting minutes.

Abstaining rather than voting "yes" or "no" on a motion before the board should be very rare and is usually appropriate only when a board member has a conflict of interest in the issue before the board.

Board members are elected to express an opinion on the issues, and abstaining expresses no opinion.

Once the vote is taken, the chair will declare that the motion passes or fails and will move on to the next item on the agenda.

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Meeting blockers

Board meetings *do not need* these kinds of board members:

- The micro-managing board member who continually questions the executive director's day-to-day management decisions.
- The grandstanding board member who uses the board meeting as a soapbox to advance a personal or political agenda or gain personal recognition.
- The silent board member who fails to represent anybody or anything by his/her silence.
- The NO!!! board member who is against anything any other board member is for.
- The purse-watching board member whose only concern is that the board spend less money, regardless of the effect on those who are served.
- The single-minded board member who came to the board with one issue to fight for and continues to burden the board with that issue at every meeting.

Counterproductive Board members

Jack Welch, long-time G.E. Board chair and CEO, identifies *five types of counterproductive Board members:*

- The Do-Nothing, who has no real interest in the HFA, so rarely challenges or probes.
- The White Flag, who lacks the courage to act or vote.
- The Cabalist, who sits quietly at meetings, but plots to build a controlling Board clique outside Board meetings.
- The Meddler, who tries to micromanage.
- The Pontificator, who cannot get enough of his own voice.

MANAGING CONFLICT ON THE BOARD TEAM

There is great power in bringing together a diverse group of community and industry leaders to be the governors of an organization such as an HFA. But with that power also comes all the elements of potential conflict among members of the board team. Conflict that amounts to healthy debate of the pros and cons on issues brought before the board is good. Conflict that results in alienation of one or more of the board members is not healthy and needs to be avoided.

Conflict on the board might occur for a variety of reasons. Here are just a few examples:

- Board members have value differences, such as conservatives versus liberals or those who wish to maintain the traditional ways versus those who like to explore the nontraditional.

- Board members experience role pressures, such as board members trying to do the executive director's job or the executive director not allowing board members to do their part of the team effort.

- Board members have differences in position or status, such as new versus veteran members of the board, male versus female, quiet versus vocal.

- Board members have different goals, such as wanting the organization to serve different segments of the population or team members favoring one program or another.

- Board members have differences in perception, such as those who see the organization as a business versus those who view it as a charity.

- Board members have different political positions or parties, and are immediately distrustful of anything suggested by the "other side."

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Dealing with conflict

Accept that members of the board will disagree. Failure to agree is not a disaster. It may be more of a problem when board members seem to agree on everything because the board may not be considering all sides of the issues. Work for consensus, but feel free to disagree and voice the minority opinion. When the vote is taken, move on to the next issue with an open mind whether you were in the majority or minority.

Leave conflict in the context in which it begins. Board members may disagree on one issue, but it should not carry to the next issue, nor should it carry from one meeting to the next. Once the board has made a group decision, each board member should feel obligated to support that decision whether or not he voted for it. After the vote, the decision becomes team property, and each board member is part of the team.

Let the board deal with its own conflicts. Board members should not take the issue out of the boardroom and look for support of their beliefs among nonboard members when they can't get the board to support them. Trying to get outsiders to pressure fellow board members on any issue is unethical and damaging to your team.

Future teamwork is more important than any single issue. Conflict on any issue must be settled so the board can move on to the many important future issues. A board member's goal should not be just getting a simple majority vote on every issue, but rather seeking consensus on issues.

Compromise is not defeat. It should be accepted as one of the most significant elements in making the board work right. When a board member compromises on one issue, that member will have a better chance to get team members to accept the member's views on future issues. Look for ways to compromise.

Each board member should remember that the member's goal is to get board members to accept his point of view, not just to make a lot of noise. Carrying conflict on and on even when one knows the issue is lost will result in board teammates being very reluctant to work with you on any issue. Such a board member will, in effect, be neutralized and simply making a lot of noise—a completely ineffective board member.

LEGAL DUTIES OF A BOARD MEMBER

Board member is a "fiduciary"

All board members of HFAs are "fiduciaries" for the HFA and its purposes. That means that a board member has a duty to act for the benefit of the HFA and its purposes and must subordinate the board member's own personal interests to those of the HFA. A fiduciary duty is the *highest standard of duty* imposed by law, the same as that of a trustee or guardian.

The duties of an HFA's board members must be understood in light of its purposes which are statutorily specified, generally to finance decent, safe and sanitary housing for lower-income persons and families.

State laws impose two primary duties on board members—a duty of ***DUE CARE*** and a duty of ***LOYALTY***. These duties have been reinforced and emphasized by the principles underlying the Sarbanes-Oxley Act. In addition, because an HFA issues bonds, the federal securities laws impose a third major duty on board members—a duty of ***DISCLOSURE***.

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Duty of Due Care

The duty of ***DUE CARE*** is a very broad duty which requires that a board member exercise ordinary and reasonable care in the performance of the board member's office. This requires that a board member act in good faith, prudently and honestly.

In particular, the duty of ***DUE CARE*** requires that a board member:

- Be sure all *specific obligations* listed in the HFA's enabling legislation are carried out, such as keeping minutes of board meetings, electing officers, meeting periodically, filing reports, adopting rules and regulations for programs, and so on. These are often called "ministerial obligations," and courts are pretty rigid about making sure the board complies with these. The "whistle-blower" and record retention provisions of the Sarbanes-Oxley Act also fall into this category.

- Adopt *appropriate programmatic policies* to be sure that the HFA purposes are carried out. These are often referred to as "discretionary duties," and courts will give board members substantial latitude in the type of policies adopted and their content.

- Employ competent *staff*.

- Generally *supervise and monitor* HFA operations.

- Adopt *reasonable and clear management policies*.

- *Be informed* and *exercise independent judgment*. This means that a board member should read and be familiar with board materials, including the HFA's act and its rules and regulations and written policies. Board members should attend meetings and participate in board discussions and decisions. (As one court said, a board member cannot protect himself behind a paper shield bearing the motto "dummy director.") However, in the ordinary course of business, a board member may act in reliance on information and reports received from regular sources that the board member reasonably regards as trustworthy, such as staff and retained professionals.

- Protect any *confidential information* obtained as a board member.

In other words, a board member should follow prudent business practices, recognizing that the HFA business is financial in nature and its purpose is to finance *affordable housing*.

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Duty of Loyalty

The second major state law duty is a duty of ***LOYALTY*** to the organization. This means a board member has a duty to avoid conflicts of interests and provide undivided allegiance to the HFA's purposes, even though by statute a board member may be a representative of a particular group (such as lenders or builders) or even an ex officio elected official.

In particular, the duty of ***LOYALTY*** provides that a board member should:

- **NOT** participate in making a decision if the board member has a conflict of interest. *Conflicts are not illegal—but how a board member handles them may be. This is underscored by the principles of the Sarbanes-Oxley Act*.

➢**NOT** create situations that unnecessarily give rise to, or indirectly provide support to, litigation against the HFA. Litigation, or threatened litigation, can and should be freely and openly discussed in executive session, but generally not in open public session—and in particular board members should not make public statements adverse to the interests of the HFA about matters in litigation.

➢**NOT** take personal advantage of opportunities available to the HFA. This means avoiding not only personal advantage, but also avoiding providing advantages to another organization, even if it is another municipal corporation or a nonprofit organization. (Board members who, by statute, are to be members of or "represent" particular industry groups are expected to be knowledgeable about issues particular to their industry groups and inform other board members of the issues, but still should vote only with the purposes and interests of the HFA in mind.) This is the root of all the recent focus on ethics. Most states now have ethics laws, and many HFAs have adopted ethics rules (which have substantial preemptive and prophylactic value). And, of course, the federal government enacted the Sarbanes-Oxley Act, which effectively forces SEC-registered corporations to adopt ethics rules.

Three practical rules an HFA board member should follow when duty of ***LOYALTY*** questions arise: (1) use common sense, (2) if in doubt, ask the HFA staff for guidance, and (3) think about the slant the press could put on a proposed action.

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Duty of Disclosure

The third major duty, imposed by federal securities laws because an HFA issues bonds, is the duty of ***DISCLOSURE***.

When an HFA issues bonds, the federal securities laws require the HFA to disclose to potential investors any "material" information—*i.e.*, information that a reasonable investor would consider important in deciding whether to invest in the bonds. That is the reason for the HFA's official statement—it is the written means by which the HFA satisfies this "disclosure" requirement.

The SEC officially takes the position that *individual* board members of an HFA also have a *personal* disclosure duty under the federal securities laws. When authorizing the issuance of bonds, any board member with *personal knowledge* of information that is material must take reasonable steps to be sure such information is adequately addressed in disclosure documents. Reasonable steps include telling the

staff and retained professionals. This rule applies to information that any board member *actually knew* or *should have known* if the board member had carried out his duties.

For example, if a board member personally knows that the developer of a multifamily project to be financed with bonds has severe financial problems but the board member does not take steps to ensure that the information is properly considered in the disclosure process, the board member may be personally liable if the market value of the related bonds drops when the undisclosed information finally becomes public. If the board member did not actually know that particular developer was involved in the project because the board member did not read the board materials distributed about the project, the board member may still be liable for recklessly disregarding his duty of due care to be informed.

A similar situation could occur if a board member personally knows—or should have known—of a troubled originator/servicer in a single-family program.

The duty of ***DISCLOSURE*** also provides that if a board member wants to buy or sell bonds issued by the HFA, in the purchase or sale the board member must not take advantage of any nonpublic information available to the board member. For example, a board member should not ask the finance officer whether a particular bond will be called—and then buy or sell the bond in advance of the call based on that information.

BOARD MEMBER LIABILITY

This is an age of increasing litigation. People are quick to take each other to court for the smallest of reasons. When a person accepts a board position and takes on the responsibility of governing an HFA, that person naturally get the liability of that task as part of the baggage. The season is always open on public figures—or those responsible for allocating scarce but valuable resources such as federal tax credits.

The liability risk should not be an overwhelming factor in service to an HFA. Many states have adopted laws that limit the liability of board members. It is extremely rare that an HFA board member is successfully sued for actions as a board member, and to date only for clear criminal activity. But it's just good business to assess the risk and understand the extent of your liability.

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Practical rules to manage liability

1) **Pay attention**. A board member's greatest liability risk comes from negligence in doing the job as it should be done. When a member misses meetings, votes on issues without adequate preparation or study, fails to evaluate the financial status of the organization or just doesn't take the time to do the job right, that member is walking on dangerous ground.

Each member was appointed to pay attention and keep things running right. By taking a seat at the board table, each member accepts that responsibility. If a member then fails to actually take due care in governance of this organization, that member is negligent and may be liable for that negligence.

Pay attention to financial reports and the annual audit. Read the minutes of the meetings for accuracy. Make sure you have adequate and correct information and understand the issues before making decisions. Evaluate the progress of the organization annually. Make sure your staff treats all program applicants the same—and fairly. Make sure you have a competent and experienced professional team.

2) **Know the HFA's board policies well and follow them**. Failure to have a policy when the board should have one or failure to abide by the policies it has approved is often a source of litigation against boards.

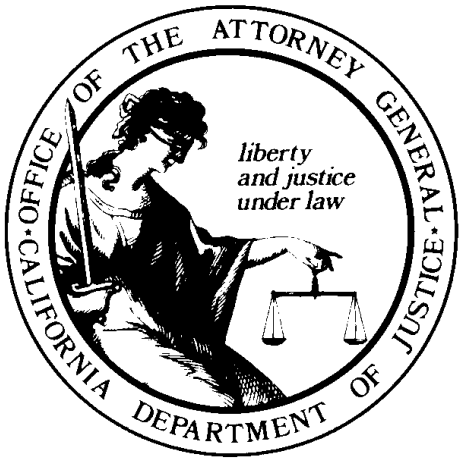
3) **Use common sense in taking action as a board member**. No one has to tell a board member that actions such as employment discrimination, sexual harassment, falsifying expense reimbursements or manipulating funds are dangerous and could land you in court.

4) **Seek legal counsel when a question of legality arises**. Also, take preventative measures and request that the organization's legal counsel discuss liability risks with the full board.

5) **Know what protection is afforded you under state and federal laws**. The laws of many states, and in limited cases certain federal laws, afford legal protections to board members when acting in good faith in their official capacity.

6) **Check your board's Directors and Officers (Errors and Omissions) insurance policy to know what it covers and what it does not cover**. Most homeowner liability policies do not cover liability as a board member, so a member should have additional coverage through the organization's insurance package. D&O insurance costs have risen dramatically in the last few years, and coverage has shrunk, all to the point where D&O insurance is of limited value.

7) **Check your board's indemnification policy**. HFAs should have an indemnification policy by which the HFA assumes any board member's defense—and defense costs—unless the member has violated their duties as a board member. Most HFAs have sufficient financial strength that an indemnification policy is more valuable than D&O insurance. Moreover, costs of defense are the real financial exposure for board members.



A Handy Guide to The Bagley-Keene Open Meeting Act 2004 2018 Update

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

[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.

[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

[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

California Government Code §11120-11132

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11120. POLICY STATEMENT; REQUIREMENT FOR OPEN MEETINGS

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 DEFINED

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.

(e) Notwithstanding subdivision (a) of Section 11121.1, the State Bar of California, as described in Section 6001 of the Business and Professions Code. This subdivision shall become operative on April 1, 2016.

(Amended by Stats. 2015, Ch. 537, Sec. 22. (SB 387) Effective January 1, 2016.)

11121.1. STATE BODY; EXCEPTIONS

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

(a) Except as provided in subdivision (e) of Section 11121, 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) The Credit Union Advisory Committee established pursuant to Section 14380 of the Financial Code.

(Amended by Stats. 2015, Ch. 537, Sec. 23. (SB 387) Effective January 1, 2016.)

11121.9. REQUIREMENT TO PROVIDE LAW TO MEMBERS

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.

(Amended by Stats. 1981, Ch. 968, Sec. 7.1.)

11121.95. APPLICATION TO PERSONS WHO HAVE NOT ASSUMED OFFICE

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.

(Added by Stats. 1997, Ch. 949, Sec. 1. Effective January 1, 1998.)

11122. ACTION TAKEN; DEFINED

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.

(Amended by Stats. 1981, Ch. 968, Sec. 7.3.)

11122.5. MEETING DEFINED; EXCEPTIONS

(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) (1) A majority of the members of a state body shall not, outside of a meeting authorized by this chapter, use a series of communications of any kind, directly or through intermediaries, to discuss, deliberate, or take action on any item of business that is within the subject matter of the state body.

(2) Paragraph (1) shall not be construed to prevent an employee or official of a state agency from engaging in separate conversations or communications outside of a meeting authorized by this chapter with members of a legislative body in order to answer questions or provide information regarding a matter that is within the subject matter jurisdiction of the state agency, if that person does not communicate to members of the legislative body the comments or position of any other member or members of the legislative body.

(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 that do not violate subdivision (b).

(2) (A) 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, if 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.

(B) Subparagraph (A) does not 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, if 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, if 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, if 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, if the members of the state body who are not members of the standing committee attend only as observers.

(Amended by Stats. 2009, Ch. 150, Sec. 1. (AB 1494) Effective January 1, 2010.)

11123. REQUIREMENT FOR OPEN MEETINGS; TELECONFERENCE MEETINGS

(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.

(c) The state body shall publicly report any action taken and the vote or abstention on that action of each member present for the action.

(Amended by Stats. 2014, Ch. 510, Sec. 1. (AB 2720) Effective January 1, 2015.)

11123.1. COMPLIANCE WITH THE ADA

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.

(Added by Stats. 2002, Ch. 300, Sec. 1. Effective January 1, 2003.)

11123.5. TELECONFERENCE MEETING PROVISIONS

(a) In addition to the authorization to hold a meeting by teleconference pursuant to subdivision (b) of Section 11123, any state body that is an advisory board, advisory commission, advisory committee, advisory subcommittee, or similar multimember advisory body may hold an open meeting by teleconference as described in this section, provided the meeting complies with all of the section's requirements and, except as set forth in this section, it also complies with all other applicable requirements of this article.

(b) A member of a state body as described in subdivision (a) who participates in a teleconference meeting from a remote location subject to this section's requirements shall be listed in the minutes of the meeting.

(c) The state body shall provide notice to the public at least 24 hours before the meeting that identifies any member who will participate remotely by posting the notice on its Internet Web site and by emailing notice to any person who has requested notice of meetings of the state body under this article. The location of a member of a state body who will participate remotely is not required to be disclosed in the public notice or email and need not be accessible to the public. The notice of the meeting shall also identify the primary physical meeting location designated pursuant to subdivision (e).

(d) This section does not affect the requirement prescribed by this article that the state body post an agenda of a meeting at least 10 days in advance of the meeting. The agenda shall include information regarding the physical meeting location designated pursuant to subdivision (e), but is not required to disclose information regarding any remote location.

(e) A state body described in subdivision (a) shall designate the primary physical meeting location in the notice of the meeting where members of the public may physically attend the meeting and participate. A quorum of the members of the state body shall be in attendance at the primary physical meeting location, and members of the state body participating remotely shall not count towards establishing a quorum. All decisions taken during a meeting by teleconference shall be by rollcall vote. The state body shall post the agenda at the primary physical meeting location, but need not post the agenda at a remote location.

(f) When a member of a state body described in subdivision (a) participates remotely in a meeting subject to this section's requirements, the state body shall provide a means by which the public may remotely hear audio of the meeting or remotely observe the meeting, including, if available, equal access equivalent to members of the state body participating remotely. The applicable teleconference phone number or Internet Web site, or other information indicating how the public can access the meeting remotely, shall be in the 24-hour notice described in subdivision (a) that is available to the public.

(g) Upon discovering that a means of remote access required by subdivision (f) has failed during a meeting, the state body described in subdivision (a) shall end or adjourn the meeting in accordance with Section 11128.5. In addition to any other requirements that may apply, the state body shall provide notice of the meeting's end or adjournment on its Internet Web site and by email to any person who has requested notice of meetings of the state body under this article. If the meeting will be adjourned and reconvened on the same day, further notice shall be provided by an automated message on a telephone line posted on the state body's agenda, or by a similar means, that will communicate when the state body intends to reconvene the meeting and how a member of the public may hear audio of the meeting or observe the meeting.

(h) For purposes of this section:

(1) "Participate remotely" means participation in a meeting at a location other than the physical location designated in the agenda of the meeting.

(2) "Remote location" means a location other than the primary physical location designated in the agenda of a meeting.

(3) "Teleconference" has the same meaning as in Section 11123.

(i) This section does not limit or affect the ability of a state body to hold a teleconference meeting under another provision of this article.

(Added by Stats. 2018, Ch. 881, Sec. 1. (AB 2958) Effective January 1, 2019.)

11124. NO CONDITIONS FOR ATTENDING MEETINGS

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.

(Amended by Stats. 1981, Ch. 968, Sec. 8.)

11124.1. RIGHT TO RECORD MEETINGS

(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 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 audio or video recording 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 recording. Any inspection of an audio or video recording shall be provided without charge on equipment 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.

(Amended by Stats. 2009, Ch. 88, Sec. 42. (AB 176) Effective January 1, 2010.)

11125. REQUIRED NOTICE

(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.

(Amended by Stats. 2002, Ch. 300, Sec. 2. Effective January 1, 2003.)

11125.1. AGENDA - WRITINGS PROVIDED TO BODY AND PUBLIC RECORDS

(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 prepared and distributed by the Franchise Tax 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 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.

(Amended by Stats. 2005, Ch. 188, Sec. 1. Effective January 1, 2006.)

11125.2. ANNOUNCEMENT OF PERSONNEL ACTION

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.

(Amended by Stats. 1981, Ch. 968, Sec. 10.3.)

11125.3. EXCEPTION TO AGENDA REQUIREMENTS

(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.

(Amended by Stats. 2001, Ch. 243, Sec. 9. Effective January 1, 2002.)

11125.4. SPECIAL MEETINGS

(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 when compliance with the 10-day notice provisions of Section 11125 would impose a substantial hardship on the state body or when 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.

(8) To consider its response to a confidential final draft audit report as permitted by Section 11126.2.

(9) To provide for an interim executive officer of a state body upon the death, incapacity, or vacancy in the office of the executive officer.

(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 deliver the notice 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 Web 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.

(Amended by Stats. 2007, Ch. 92, Sec. 1. Effective January 1, 2008.)

11125.5. EMERGENCY MEETINGS

(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.

(Amended by Stats. 1999, Ch. 393, Sec. 3. Effective January 1, 2000. As provided in Sec. 7 of Ch. 393, amendment is to be implemented on July 1, 2001, or other date authorized by Dept. of Information Technology pursuant to Executive Order D-3-99.)

11125.6. EMERGENCY MEETINGS; FISH AND GAME COMMISSION

(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.

(Added by Stats. 1998, Ch. 1052, Sec. 21. Effective January 1, 1999.)

11125.7. PUBLIC COMMENT AT MEETING

(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 if 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) (1) Notwithstanding subdivision (b), when a state body limits time for public comment the state body shall provide at least twice the allotted time to a member of the public who utilizes a translator to ensure that non-English speakers receive the same opportunity to directly address the state body.

(2) Paragraph (1) shall not apply if the state body utilizes simultaneous translation equipment in a manner that allows the state body to hear the translated public testimony simultaneously.

(d) 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.

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

(f) 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.

(g) This section is not applicable to hearings conducted by the California Victim Compensation Board pursuant to Sections 13963 and 13963.1.

(h) 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.

(Amended by Stats. 2016, Ch. 31, Sec. 71. (SB 836) Effective June 27, 2016.)

11125.8. CLOSED SESSION; BOARD OF CONTROL; CRIME VICTIMS

(a) Notwithstanding Section 11131.5, in any hearing that the California Victim Compensation Board 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.

(Amended by Stats. 2016, Ch. 31, Sec. 72. (SB 836) Effective June 27, 2016.)

11125.9. REGIONAL WATER QUALITY CONTROL BOARDS; ADDITIONAL NOTICE REQUIREMENTS

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.

(Added by Stats. 1997, Ch. 301, Sec. 1. Effective January 1, 1998.)

11126. CLOSED SESSIONS

(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 their 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 or the Cannabis Control Appeals Panel 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 Division 2 of the Revenue and Taxation Code.

(12) Prevent the Corrections Standards Authority 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 Part 33 of Division 4 of Title 2 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 Department of Resources Recycling and Recovery 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 with 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 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.

(19) Prevent the California Sex Offender Management Board from holding a closed session for the purpose of discussing matters pertaining to the application of a sex offender treatment provider for certification pursuant to Sections 290.09 and 9003 of the Penal Code. Those matters may include review of an applicant's qualifications for certification.

(d) (1) Notwithstanding any other 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 the enforcement advisory 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 the qualifications 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 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 article does not prevent the Board of Administration of the Public Employees' Retirement System from holding closed sessions when considering matters relating to the development of rates and competitive strategy for plans offered pursuant to Chapter 15 (commencing with Section 21660) of Part 3 of Division 5 of Title 2.

(i) This article does not prevent the Managed Risk Medical Insurance Board from holding closed sessions when considering matters related to the development of rates and contracting strategy for entities contracting or seeking to contract with the board, entities with which the board is considering a contract, or entities with which the board is considering or enters into any other arrangement under which the board provides, receives, or arranges services or reimbursement, pursuant to Part 6.2 (commencing with Section 12693), Part 6.3 (commencing with Section 12695), Part 6.4 (commencing with Section 12699.50), Part 6.5 (commencing with Section 12700), Part 6.6 (commencing with Section 12739.5), or Part 6.7 (commencing with Section 12739.70) of Division 2 of the Insurance Code.

(j) Nothing in this article shall be construed to prevent the board of the State Compensation Insurance Fund from holding closed sessions in the following:

(1) When considering matters related to claims pursuant to Chapter 1 (commencing with Section 3200) of Division 4 of the Labor Code, to the extent that confidential medical information or other individually identifiable information would be disclosed.

(2) To the extent that matters related to audits and investigations that have not been completed would be disclosed.

(3) To the extent that an internal audit containing proprietary information would be disclosed.

(4) To the extent that the session would address the development of rates, contracting strategy, underwriting, or competitive strategy, pursuant to the powers granted to the board in Chapter 4 (commencing with Section 11770) of Part 3 of Division 2 of the Insurance Code, when discussion in open session concerning those matters would prejudice the position of the State Compensation Insurance Fund.

(k) The State Compensation Insurance Fund shall comply with the procedures specified in Section 11125.4 of the Government Code with respect to any closed session or meeting authorized by subdivision (j), and in addition shall provide an opportunity for a member of the public to be heard on the issue of the appropriateness of closing the meeting or session.

(Amended by Stats. 2019, Ch. 40, Sec. 15. (AB 97) Effective July 1, 2019.)

11126.1. MINUTES; AVAILABILITY

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.

(Amended by Stats. 1981, Ch. 968, Sec. 13.)

11126.2. CLOSED SESSION; BUREAU OF STATE AUDITS; CONFIDENTIAL FINAL DRAFT AUDITS

(a) Nothing in this article shall be construed to prohibit a state body that has received a confidential final draft audit report from the Bureau of State Audits from holding closed sessions to discuss its response to that report.

(b) After the public release of an audit report by the Bureau of State Audits, if a state body meets to discuss the audit report, it shall do so in an open session unless exempted from that requirement by some other provision of law.

(Added by Stats. 2004, Ch. 576, Sec. 2. Effective January 1, 2005.)

11126.3. REQUIRED NOTICE FOR CLOSED SESSIONS

(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.

(Amended by Stats. 2001, Ch. 243, Sec. 11. Effective January 1, 2002.)

11126.4. CLOSED SESSION; CALIFORNIA GAMBLING CONTROL COMMISSION

(a) Nothing in this article shall be construed to prevent the California Gambling Control Commission from holding a closed session when discussing matters involving trade secrets, nonpublic financial data, confidential or proprietary information, and other data and information, the public disclosure of which is prohibited by law or a tribal-state gaming compact.

(b) Discussion in closed session authorized by this section shall be limited to the confidential data and information related to the agendized item and shall not include discussion of any other information or matter.

(c) Before going into closed session the commission shall publicly announce the type of data or information to be discussed in closed session, which shall be recorded upon the commission minutes.

(d) Action taken on agenda items discussed pursuant to this section shall be taken in open session.

(Added by Stats. 2005, Ch. 274, Sec. 1. Effective January 1, 2006.)

11126.4.5. CLOSED SESSION; TRIBAL NATION GRANT PANEL

(a) This article does not prohibit the Tribal Nation Grant Panel from holding a closed session when discussing matters involving information relating to the administration of Article 2.3 (commencing with Section 12019.30) of Chapter 1 of Part 2 that describes, directly or indirectly, the internal affairs of an eligible tribe, including, but not limited to, the finances and competitive business plans of an eligible tribe.

(b) Discussion in closed session authorized by this section shall be limited to the confidential information related to the agendized item and shall not include discussion of any other information or matter.

(c) Before going into closed session, the Tribal Nation Grant Panel shall publicly announce the type of information to be discussed in closed session, which shall be recorded in the minutes.

(d) Action taken on agenda items discussed pursuant to this section shall be taken in open session.

(e) For purposes of this section, the terms “Tribal Nation Grant Panel” and “eligible tribe” shall have the same meanings as set forth in Article 2.3 (commencing with Section 12019.30) of Chapter 1 of Part 2.

(Added by Stats. 2018, Ch. 801, Sec. 1. (AB 880) Effective January 1, 2019.)

11126.5. REMOVAL OF DISRUPTIVE PERSONS

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.

(Amended by Stats. 1981, Ch. 968, Sec. 15.)

11126.7. CHARGING FEES PROHIBITED

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.

(Amended by Stats. 1981, Ch. 968, Sec. 16.)

11127. STATE BODIES COVERED

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.

(Amended by Stats. 1981, Ch. 968, Sec. 17.)

11128. TIME RESTRICTIONS FOR HOLDING CLOSED SESSIONS

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

(Amended by Stats. 1981, Ch. 968, Sec. 18.)

11128.5. ADJOURNMENT

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.

(Added by Stats. 1997, Ch. 949, Sec. 11. Effective January 1, 1998.)

11129. CONTINUATION OF MEETING; NOTICE REQUIREMENT

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.

(Amended by Stats. 1997, Ch. 949, Sec. 12. Effective January 1, 1998.)

11130. LEGAL REMEDIES TO STOP OR PROHIBIT VIOLATIONS OF THE ACT

(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 audio 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 audio record its closed sessions and preserve the audio 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 audio recordings shall be subject to the following discovery procedures:

(A) In any case in which discovery or disclosure of the audio recording 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 audio 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.

(Amended by Stats. 2009, Ch. 88, Sec. 43. (AB 176) Effective January 1, 2010.)

11130.3. CAUSE OF ACTION TO VOID ACTION

(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.

(Amended by Stats. 1999, Ch. 393, Sec. 5. Effective January 1, 2000.)

11130.5. COURT COSTS; ATTORNEY FEES

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.

(Amended by Stats. 1985, Ch. 936, Sec. 2.)

11130.7. VIOLATION; MISDEMEANOR

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.

(Amended by Stats. 1997, Ch. 949, Sec. 14. Effective January 1, 1998.)

11131. PROHIBITED MEETING FACILITIES; DISCRIMINATION

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 ancestry or any characteristic listed or defined in Section 11135, 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.

(Amended by Stats. 2007, Ch. 568, Sec. 32. Effective January 1, 2008.)

11131.5. REQUIRED NOTICE; EXEMPTION FOR NAME OF VICTIM

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.

(Added by Stats. 1997, Ch. 949, Sec. 16. Effective January 1, 1998.)

11132. CLOSED SESSIONS; EXPRESS AUTHORIZATION REQUIRED

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

(Added by Stats. 1987, Ch. 1320, Sec. 4.)

11133. TELECONFERENCE REQUIREMENTS SUSPENDED

(a) Notwithstanding any other provision of this article, and subject to the notice and accessibility requirements in subdivisions (d) and (e), a state body may hold public meetings through teleconferencing and make public meetings accessible telephonically, or otherwise electronically, to all members of the public seeking to observe and to address the state body.

(b) (1) For a state body holding a public meeting through teleconferencing pursuant to this section, all requirements in this article requiring the physical presence of members, the clerk or other personnel of the state body, or the public, as a condition of participation in or quorum for a public meeting, are hereby suspended.

(2) For a state body holding a public meeting through teleconferencing pursuant to this section, all of the following requirements in this article are suspended:

(A) Each teleconference location from which a member will be participating in a public meeting or proceeding be identified in the notice and agenda of the public meeting or proceeding.

(B) Each teleconference location be accessible to the public.

(C) Members of the public may address the state body at each teleconference conference location.

(D) Post agendas at all teleconference locations.

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

(c) A state body that holds a meeting through teleconferencing and allows members of the public to observe and address the meeting telephonically or otherwise electronically, consistent with the notice and accessibility requirements in subdivisions (d) and (e), shall have satisfied any requirement that the state body allow members of the public to attend the meeting and offer public comment. A state body need not make available any physical location from which members of the public may observe the meeting and offer public comment.

(d) If a state body holds a meeting through teleconferencing pursuant to this section and allows members of the public to observe and address the meeting telephonically or otherwise electronically, the state body shall also do both of the following:

(1) Implement a procedure for receiving and swiftly resolving requests for reasonable modification or accommodation from individuals with disabilities, consistent with the federal Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12101 et seq.), and resolving any doubt whatsoever in favor of accessibility.

(2) Advertise that procedure each time notice is given of the means by which members of the public may observe the meeting and offer public comment, pursuant to paragraph (2) of subdivision (e).

(e) Except to the extent this section provides otherwise, each state body that holds a meeting through teleconferencing pursuant to this section shall do both of the following:

(1) Give advance notice of the time of, and post the agenda for, each public meeting according to the timeframes otherwise prescribed by this article, and using the means otherwise prescribed by this article, as applicable.

(2) In each instance in which notice of the time of the meeting is otherwise given or the agenda for the meeting is otherwise posted, also give notice of the means by which members of the public may observe the meeting and offer public comment. As to any instance in which there is a change in the means of public observation and comment, or any instance prior to the effective date of this section in which the time of the meeting has been noticed or the agenda for the meeting has been posted without also including notice of the means of public observation and comment, a state body may satisfy this requirement by advertising the means of public observation and comment using the most rapid means of communication available at the time. Advertising the means of public observation and comment using the most rapid means of communication available at the time shall include, but need not be limited to, posting such means on the state body's internet website.

(f) All state bodies utilizing the teleconferencing procedures in this section are urged to use sound discretion and to make reasonable efforts to adhere as closely as reasonably possible to the otherwise applicable provisions of this article, in order to maximize transparency and provide the public access to state body meetings.

(g) This section shall remain in effect only until January 31, 2022, and as of that date is repealed.

(Added by Stats. 2021, Ch. 165, Sec. 2. (AB 361) Effective September 16, 2021. Repealed as of January 31, 2022, by its own provisions.)