



CANNABIS CONTROL APPEALS PANEL

MEETING AGENDA

Monday, August 13, 2018
1:00 – 4:00 pm
(or conclusion of business)

CalEPA Headquarters Building - 2nd Floor/Sierra Hearing Room
1001 I Street, Sacramento, CA 95814

1. **CALL TO ORDER AND ESTABLISHMENT OF A QUORUM**
2. **PANEL MEMBER INTRODUCTIONS**
3. **INFORMATIONAL PRESENTATION: BUSINESS, CONSUMER SERVICES AND HOUSING AGENCY REPORT OF JANUARY – JULY 2018 ACTIVITIES**
4. **INFORMATIONAL PRESENTATION: BAGLEY-KEENE OPEN MEETING ACT**
5. **DISCUSSION AND ACTION REGARDING PROPOSED CCAP CONFLICT OF INTEREST CODE**
6. **DISCUSSION AND ACTION REGARDING PROPOSED CCAP BOARD POLICY MANUAL**
7. **DISCUSSION AND ELECTION OF CCAP CHAIR**
8. **INFORMATIONAL PRESENTATION: OVERVIEW OF THE ADMINISTRATIVE PROCEDURES ACT**
9. **DISCUSSION AND ACTION REGARDING PROPOSED REGULATION TEXT TO ESTABLISH APPEALS PROCEDURES AND TIMELINE**
10. **PUBLIC COMMENT ON ITEMS NOT ON THE AGENDA**
The panel may not discuss or act on any matter raised during the public comment section that is not included on this agenda, except whether to decide to place the matter on the agenda of a future meeting. (Government Code §§ 11125 and 11125.7 (a))
11. **DISCUSSION AND ACTION REGARDING 2018 MEETING SCHEDULE**



CANNABIS CONTROL APPEALS PANEL

12. FUTURE AGENDA ITEMS

13. CLOSED SESSION

- a. Discussion and possible action of the appointment of an Executive Officer, under authority of Government Code 11126(a)(1).
- b. Discussion and possible action of the appointment of an Assistant Chief Counsel, under authority of Government Code 11126(a)(1).

14. MEETING ADJOURNED

CANNABIS CONTROL APPEALS PANEL MEMBERS

Sabrina Ashjian – Member, Fresno County
Diandra Bremond – Member, Los Angeles County
Adrian Carpenter – Member, Yuba County
Vacant – Senate Rules Appointee
Vacant – Speaker of the Assembly Appointee

NOTICE TO THE PUBLIC

The public may provide appropriate comment on any issue before the panel at the time the item is discussed. If public comment is not specifically requested, members of the public should feel free to request an opportunity to comment. Total time allocated for public comment may be limited.

All times are approximate and subject to change. The meeting may be cancelled without notice. Agenda items may be taken out of order to accommodate speakers and to maintain a quorum. Action may be taken on any item on the agenda. This panel meeting is open to the public and is accessible to the physically disabled. A person who needs a disability-related accommodation or modification to participate in the meeting may make a request by contacting Catherine Ohaegbu at (916) 653-4090. Providing your request at least five business days before the meeting will help to ensure availability of the requested accommodation.

If you wish to participate, please plan to attend at the physical location. Seating for all attendees cannot, however, be guaranteed in the event the room reaches capacity. Interested parties should access the Panel's website for more information at <http://www.ccap.ca.gov/>. Requests for further information should be directed to Catherine Ohaegbu at (916) 653-4090.

Date of notice: August 3, 2018

AGENDA ITEM 1

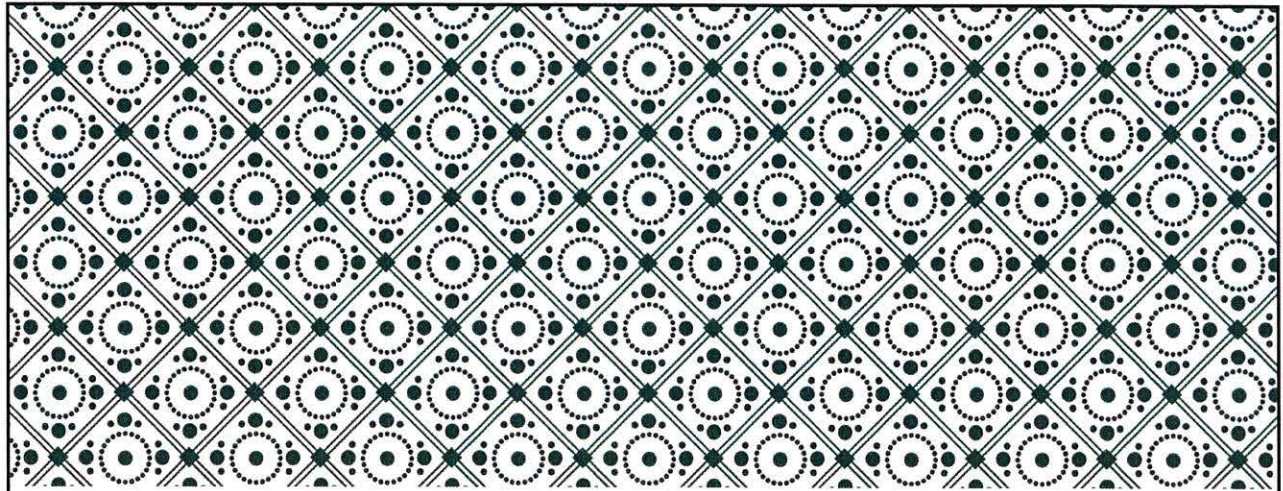
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MATERIAL FOR ITEM 1**

AGENDA ITEM 2

**THERE IS NO BOARD PACKAGE
MATERIAL FOR ITEM 2**

AGENDA ITEM 3

**INFORMATIONAL PRESENTATION:
REPORT OF
JANUARY – JULY 2018 ACTIVITIES**



REPORT OF JANUARY – JULY 2018 ACTIVITIES

SONYA LOGMAN
DEPUTY SECRETARY, BUSINESS AND CONSUMER RELATIONS
BUSINESS, CONSUMER SERVICES AND HOUSING AGENCY

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INTRODUCTION

- Groundwork accomplished for several required state processes
- Several require a designated CCAP staff member to start/complete processes

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FACILITIES

- Temporary office location: 801 Capitol Mall, Suite 601
 - Acquisition of temporary furniture, phones, and office supplies
- Permanent office location: 400 R Street, Suite 320
 - Lease terms negotiated by Department of General Services
 - 6,912 SF office
 - Standard lease agreement; Jan 2019 - Jun 2027
 - Salary savings are expected to cover cost of all tenant improvements



PERSONNEL

- Established payroll headers through State Controller's Office
- Contracted services through Department of General Services (DGS)
 - Managing state processes related to pay and benefits
 - Managing the issuance of pay warrants
- Advertised Executive Officer & Assistant Chief Counsel positions



BUDGETING & ACCOUNTING

- Contracted services through Department of General Services (DGS)
 - Process all accounts payable
 - Maintain the fund balance record
 - Manage FI\$CAL transactions



PURCHASING

- Reimbursable contracted services through Department of Consumer Affairs (DCA)
- Once staff are in place, CCAP will need to apply for purchasing authority through the Department of General Services



INFORMATION TECHNOLOGY

- Reimbursable contracted services through Department of Business

Oversight (DBO)

- Equipment purchasing and management
- Staff tech support



BRANDING & COMMUNICATIONS

- Logo design
- Website content and design
- Business cards
- Office signage



REGULATIONS

- Consulted with Alcohol Beverage Control Appeals Panel
- Drafted regulations
- Drafted all associated documents for regulations promulgation



MEETING PREPARATION

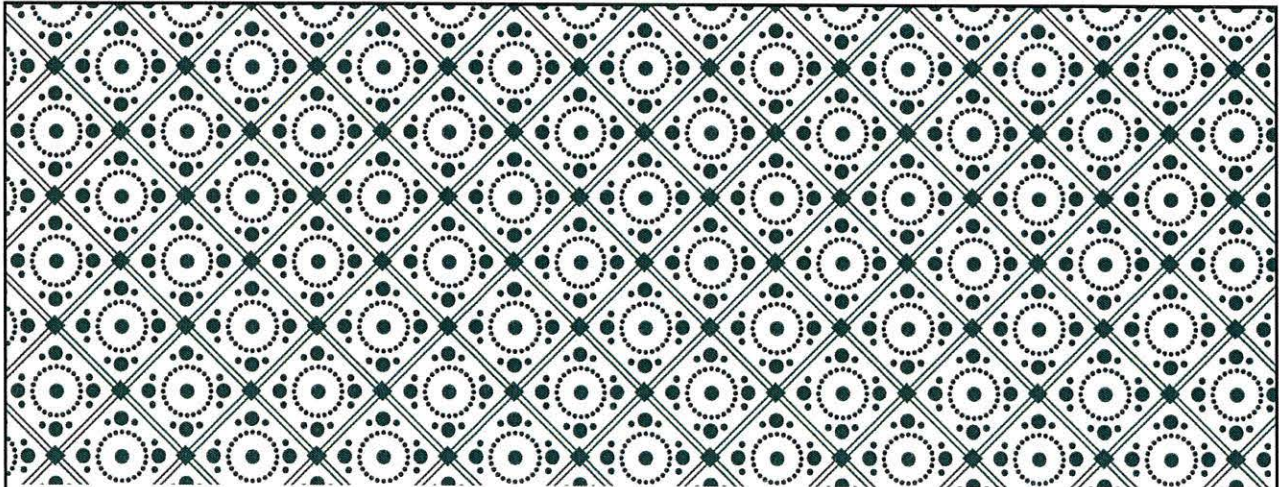
- Secured room location for Panel meeting
- Drafted and posted meeting notice and agenda
- Prepared meeting documents
- Coordinated Panel member travel



OTHER ITEMS

- Establish a Concur/Cal-ATERS account for travel
- CCAP policies & procedures
 - Sexual Harassment Prevention Policy
 - Email Retention Policy
 - Incompatible Activity Statement Policy
 - Reasonable Accommodation Policy
 - Equal Employment Opportunity Policy (EEO)
 - American's with Disability Act Policy (ADA)
 - Tribal Consultation Policy

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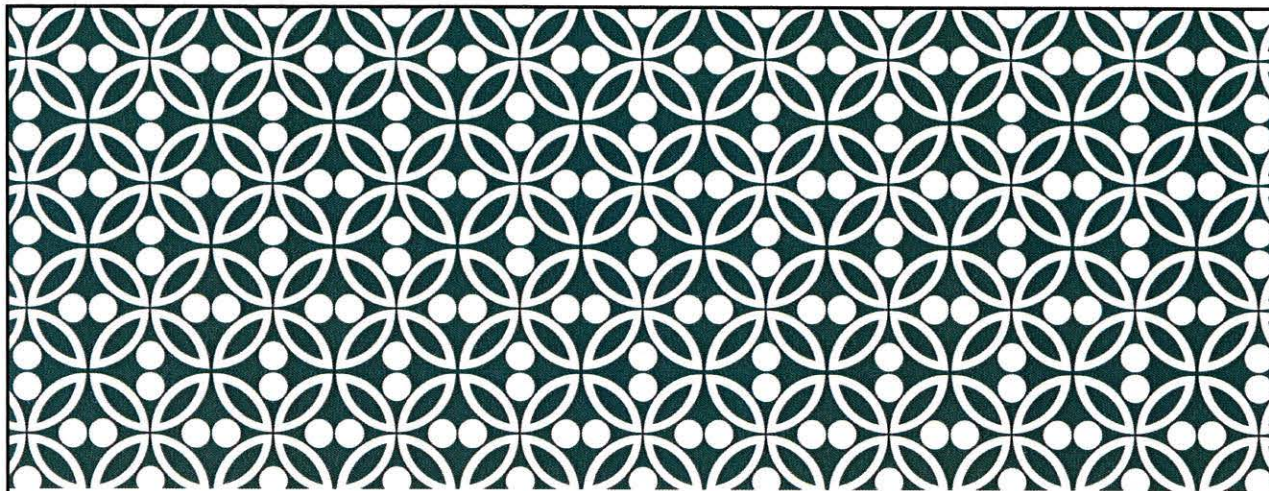


QUESTIONS?

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AGENDA ITEM 4

**INFORMATIONAL PRESENTATION:
BAGLEY-KEENE
OPEN MEETING ACT**



BAGLEY-KEENE OPEN MEETING ACT

PETER M. WILLIAMS
DEPUTY SECRETARY – GENERAL COUNSEL
BUSINESS, CONSUMER SERVICES AND HOUSING AGENCY

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BAGLEY-KEENE OPEN MEETING ACT

Declared policy of the state

“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 actions of state agencies be taken openly and that their deliberation be conducted openly....”

Govt. Code §11120.

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OVERVIEW

- All Panel meetings must be open and public
- **The Panel must provide a notice and agenda to the public for all meetings 10 calendar days in advance**
- The Panel must conduct its meetings and make its decisions in public
- The Panel must allow all persons to attend and participate in its meetings



WHO IS COVERED BY THE BAGLEY-KEENE ACT?

- State bodies that consist of multiple members (two or more people) created by statute or required by law to conduct official meetings
- Advisory Bodies, if:
 - Created by the Legislature, or
 - Created by the Panel or any member of the Panel, and has three or more members
- Delegated Body
 - Exercises power that has been delegated by the Panel
 - Common example is an Executive Committee

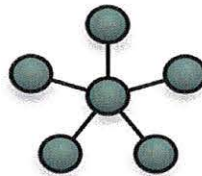


WHAT CONSTITUTES A MEETING?

A “Meeting” is defined as “any congregation of a majority of the members [of the Panel]. . . at the same time and place to hear, discuss, or deliberate upon any item that is within the subject matter jurisdiction of [the Panel].”

SERIAL MEETINGS

- Serial meetings constitute a meeting where communications “taken as a whole” involve the majority of members.
- Linear communications 1 → 2 → 3 → 4
- Spoke & Hub communications



MEETINGS BY TELECONFERENCE/VIDEOCONFERENCE

- Mandatory conditions of a teleconference location:
 - A member of the Panel is present at the site
 - Each site is accessible to the public
 - ADA compliant
 - Public can hear
- Agenda must be provided and public allowed to speak from each location
- Votes by roll call

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NOTICE

- 10 day Notice
 - Sent to everyone who has requested a copy
 - Sent to members
 - Posted on internet
- Notice includes:
 - Name, phone number and address of person who can answer questions about meeting and agenda
- Must include web site address

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AGENDA

- Brief general description (less than 20 words) of each item to be discussed or transacted
 - Provide information to help the public determine whether or not they should attend and/or participate
 - Applies to open session and closed session items
- Panel may not discuss or act on matters not included in the agenda
- New issues may be included on the next agenda

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PUBLIC ACCESS AND PARTICIPATION

- All meetings are open to the public
- All votes are open; no secret ballots
- ADA compliant
- Panel may not impose conditions on public attendance at a meeting
- Public must have the opportunity to speak either before or during consideration of each agenda item
- No discrimination of attendance based on race, national origin, etc.; no entrance fee

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PUBLIC COMMENT

- The Panel must take public comments on agenda items
 - Before or during board discussion
 - Must allow critical comments
 - Time allowed
 - Reasonable regulations may be adopted
 - Per speaker
 - Overall time allowed

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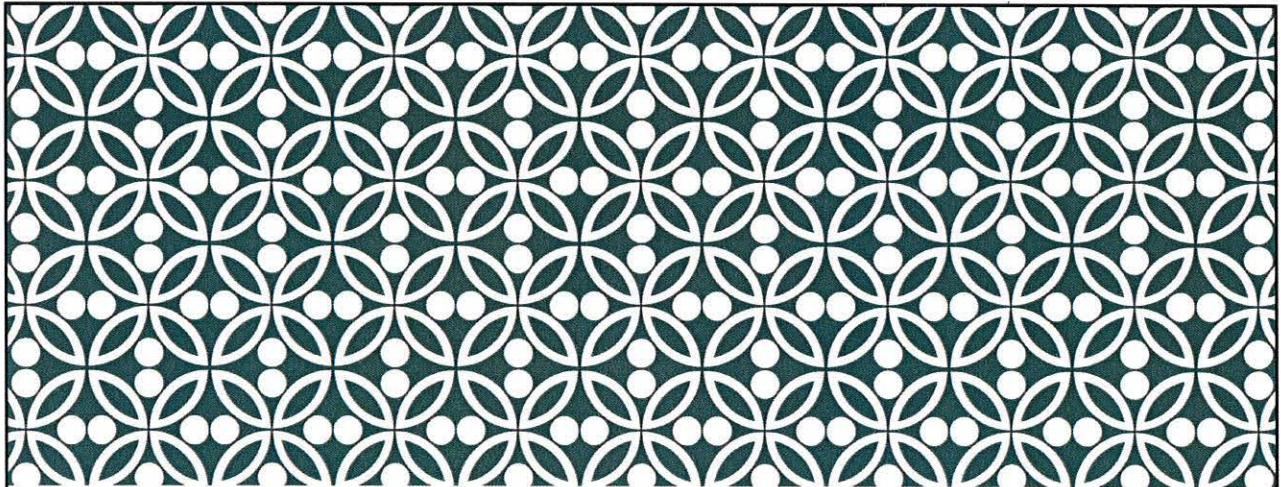
CLOSED SESSIONS

- Must list as “closed session”
- Must meet and cite statutory exception
- Decisions made in closed session are publicly announced
- Confidential minutes kept

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REMEDIES FOR VIOLATION OF BAGLEY-KEENE

- Decisions can be overturned
- May have to restart the process
- Potential for lawsuit
- Misdemeanor if proven intent to deceive public



QUESTIONS?





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

California Attorney General's Office

INTRODUCTION

The Bagley-Keene Open Meeting Act (“the Act” or “the Bagley-Keene Act”), set forth in Government Code sections 11120-11132¹, 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

¹All 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.

²42 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.

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 not 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).)

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

REMEDIES FOR VIOLATIONS

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

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

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

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

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

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

THE BAGLEY-KEENE OPEN MEETING ACT

Government Code Sections 11120-11132
(January 2004)

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THE BAGLEY-KEENE OPEN MEETING ACT

Government Code Sections 11120-11132

§ 11120. Policy statement; requirement for open meetings

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

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

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

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

§ 11121. State body

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

(a) Every state board, or commission, or similar multimember body of the state that is created by statute or required by law to conduct official meetings and every commission created by executive order.

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

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

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

§ 11121.1. State body; exceptions

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

- (a) State agencies provided for in Article VI of the California Constitution.
- (b) Districts or other local agencies whose meetings are required to be open to the public pursuant to the Ralph M. Brown Act (Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5).
- (c) State agencies provided for in Article IV of the California Constitution whose meetings are required to be open to the public pursuant to the Grunsky-Burton Open Meeting Act (Article 2.2 (commencing with Section 9027) of Chapter 1.5 of Part 1 of Division 2 of Title 2).
- (d) State agencies when they are conducting proceedings pursuant to Section 3596.
- (e) State agencies provided for in Section 109260 of the Health and Safety Code, except as provided in Section 109390 of the Health and Safety Code.
- (f) State agencies provided for in Section 11770.5 of the Insurance Code.
- (g) The Credit Union Advisory Committee established pursuant to Section 14380 of the Financial Code.

§ 11121.9. Requirement to provide law to members

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

§ 11121.95. Application to persons who have not assumed office

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

§ 11122. Action taken; defined

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

§ 11122.5. Meeting defined; exceptions

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

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

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

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

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

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

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

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

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

§ 11123. Requirement for open meetings; teleconference meetings

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

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

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

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

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

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

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

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

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

§ 11123.1. Compliance with the ADA

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

§ 11124. No conditions for attending meetings

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

§ 11124.1. Right to record meetings

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

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

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

§ 11125. Required notice

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

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

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

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

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

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

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

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

(b) Writings that are public records under subdivision (a) and that are distributed to members of the state body prior to or during a meeting, pertaining to any item to be considered during the

meeting, shall be made available for public inspection at the meeting if prepared by the state body or a member of the state body, or after the meeting if prepared by some other person. These writings shall be made available in appropriate alternative formats, as required by Section 202 of the Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12132), and the federal rules and regulations adopted in implementation thereof, upon request by a person with a disability.

(c) In the case of the Franchise Tax Board, prior to that state body taking final action on any item, writings pertaining to that item that are public records under subdivision (a) that are distributed to members of the state body by board staff or individual members prior to or during a meeting shall be:

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

(2) Distributed to all persons who request notice in writing pursuant to subdivision (a) of Section 11125.

(3) Made available on the Internet.

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

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

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

(3) Made available on the Internet.

(e) Nothing in this section shall be construed to prevent a state body from charging a fee or deposit for a copy of a public record pursuant to Section 6253, except that no surcharge shall be imposed on persons with disabilities in violation of Section 202 of the Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12132), and the federal rules and regulations adopted in implementation thereof. The writings described in subdivision (b) are subject to the requirements of the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1), and shall not be construed to limit or delay the public's right to inspect any record required to be disclosed by that act, or to limit the public's right to inspect any record covered by that act. This section shall not be construed to be applicable to any writings solely because they are properly discussed in a closed session of a state body. Nothing in this article shall be construed to require a state body to place any paid advertisement or any other paid notice in any publication.

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

§ 11125.2. Announcement of personnel action

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

§ 11125.3. Exception to agenda requirements

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

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

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

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

§ 11125.4. Special meetings

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

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

(2) To consider proposed legislation.

(3) To consider issuance of a legal opinion.

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

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

(6) To consider license examinations and applications.

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

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

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

§ 11125.5. Emergency meetings

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

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

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

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

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

§ 11125.6. Emergency meetings; Fish and Game Commission

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

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

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

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

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

§ 11125.7 Opportunity for public to speak at meeting

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

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

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

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

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

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

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

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

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

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

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

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

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

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

§ 11126. Closed sessions

11126. (a)(1) Nothing in this article shall be construed to prevent a state body from holding closed sessions during a regular or special meeting to consider the appointment, employment, evaluation of performance, or dismissal of a public employee or to hear complaints or charges brought against that employee by another person or employee unless the employee requests a public hearing.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(10) Prevent the Franchise Tax Board from holding closed sessions for the purpose of discussion of confidential tax returns or information the public disclosure of which is prohibited by

law, or from considering matters pertaining to the appointment or removal of the Executive Officer of the Franchise Tax Board.

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

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

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

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

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

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

(17) Prevent a state body, or boards, commissions, administrative officers, or other representatives that may properly be designated by law or by a state body, from holding closed sessions with its representatives in discharging its responsibilities under Chapter 10 (commencing with Section 3500), Chapter 10.3 (commencing with Section 3512), Chapter 10.5 (commencing with Section 3525), or Chapter 10.7 (commencing 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 provision of law, a state body, at any regular or special meeting, may meet in a closed session pursuant to subparagraph (A) upon a two-thirds vote of the members present at the meeting.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

§ 11126.1. Minutes; availability

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

§ 11126.3. Required notice for closed sessions

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

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

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

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

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

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

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

§ 11126.5. Removal of disruptive persons

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

§ 11126.7. Charging fees prohibited

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

§ 11127. State bodies covered

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

§ 11128. Time restrictions for holding closed sessions

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

§ 11128.5. Adjournment

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

§ 11129. Continuation of meeting; notice requirement

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

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

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

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

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

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

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

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

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

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

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

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

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

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

§ 11130.3. Cause of action to void action

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

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

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

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

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

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

§ 11130.5. Court costs; attorney's fees

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

§ 11130.7. Violation; misdemeanor

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

§ 11131. Prohibited meeting facilities; discrimination

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

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

§ 11131.5. Required notice; exemption for name of victim

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

§ 11132. Closed sessions; express authorization required

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

AGENDA ITEM 5

DISCUSSION AND ACTION
REGARDING
PROPOSED CCAP
CONFLICT OF INTEREST CODE

CANNABIS CONTROL APPEALS PANEL

STAFF REPORT

REGULAR PANEL MEETING

AUGUST 13, 2018

SUBJECT: Cannabis Control Appeals Panel (CCAP) Conflict of Interest Code

BACKGROUND:

In 1974, California voters approved Proposition 9 authorizing the Political Reform Act (Act) and establishing the Fair Political Practice Commission (FPPC). The FPPC is a five-member independent, non-partisan commission that has primary responsibility for the impartial and effective administration of the Act. The Act regulates campaign financing, conflicts of interest, lobbying, and governmental ethics.

Requirements related to government officials primarily falls under Government Code sections 87300-87505 and California Code of Regulations, Title 2, Division 6, sections 187000-18756.

As outlined in Government Code section 87300, every agency shall adopt and promulgate a Conflict of Interest Code pursuant to the provisions included in Article 3 of the Act. Each Conflict of Interest Code that is created must contain certain elements, including an outline of positions within the agency, a determination of if the position should be reportable based on the type of influence the position may have on material decisions of the agency, and the types of disclosures that should be reportable.

The adoption and amendment of an agency's Conflict of Interest Code is subject to a somewhat different process than regular rulemaking under the Administrative Procedures Act (APA). Once approved by the Panel, the proposed Conflict of Interest Code will be filed with the Office of Administrative Law and noticed in the California Regulatory Notice Register, commencing a 45-day public comment period. At the end of the comment period, the Panel will submit the proposed Code with amendments (if any) to the FPPC for final approval and filing with the Secretary of State.

ANALYSIS:

Upon review of the organizational structure and the likely duties of the eight staff members proposed to serve the Panel, legal counsel at Business, Consumer Services and Housing Agency (BCSH) drafted the proposed Conflict of Interest Code. The proposed Panel Conflict of Interest Code was drafted in consultation with the FPPC and takes into consideration similar codes adopted by other administrative appellate bodies such as the Alcoholic Beverage Control Appeals Board and the Occupational Safety & Health Appeals Board.

ATTACHMENT:

- *Draft Conflict of Interest Code text*

RECOMMENDATION:

Approve the proposed Conflict of Interest Code text and authorize BCSH staff to complete the appropriate public posting to facilitate the adoption process.

STAFF CONTACT:

Peter M. Williams, Deputy Secretary and General Counsel
Business, Consumer Services and Housing Agency
(916) 653-4090

Cannabis Control Appeals Panel**Conflict of Interest Code****6020. General Provisions.**

The Political Reform Act (Government Code Section 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) that contains the terms of a standard conflict of interest code, which can be incorporated by reference in an agency's code. After public notice and hearing, the standard code may be amended by the Fair Political Practices Commission to conform to amendments in the Political Reform Act. Therefore, the terms of 2 California Code of Regulations Section 18730 and any amendments to it duly adopted by the Fair Political Practices Commission are hereby incorporated by reference. This regulation and the attached Appendix, designating positions and establishing disclosure categories, shall constitute the conflict of interest code of the **Cannabis Control Appeals Panel (Panel).**

Panel members and the Executive Officer must file their statements of economic interests electronically with the **Fair Political Practices Commission**. All other individuals holding designated positions must file their statements with the **Panel**. All statements must be made available for public inspection and reproduction under Government Code Section 81008.

16 CCR Appendix**Designated Positions and Disclosure Categories**

<u>Position Title</u>	<u>Assigned Categories</u>
<u>Panel Member</u>	<u>1, 2</u>
<u>Executive Officer</u>	<u>1, 2</u>
<u>Attorney (all levels)</u>	<u>1, 2</u>
<u>Associate Governmental Program Analyst</u>	<u>2</u>

Category 1:

Individuals holding a designated position assigned to this category must report all interests in real property located in California as well as investments and business positions in business entities and sources of income (including receipt of gifts, loans and travel payments) if the business entity or source of income is any of the following:

- An applicant for, or current holder of, a cannabis license of any type; or
- The holder of a cannabis license of any type at any time within the preceding four years.

Category 2:

Individuals holding a designated position assigned to this category must report investments and business positions in business entities and sources of income (including receipt of gifts, loans and travel payments) if the business entity or source provides leased facilities, products, equipment, vehicles, machinery or services (including training or consulting services) of the type utilized by the Panel.

AGENDA ITEM 6

DISCUSSION AND ACTION
REGARDING
PROPOSED CCAP
BOARD POLICY MANUAL

CANNABIS CONTROL APPEALS PANEL

STAFF REPORT

REGULAR PANEL MEETING

AUGUST 13, 2018

SUBJECT: Cannabis Control Appeals Panel Member Handbook

BACKGROUND:

As a matter of best practices, all government boards and commission typically adopt a board policy manual. This document is intended to provide guidance to members of the board under specific circumstances, reiterates relevant statutes and ethical standards, and provides consistency to general administrative policies.

ANALYSIS:

State boards and commissions, and specifically their members, typically encounter a variety of issues during their tenure.

After reviewing several board policy manuals (that range from simple to complex), staff have identified relevant items to include in an initial member handbook, which include:

- Background on Panel members and their authority,
- Outlining expectations for the on-boarding process, based on mandated forms and training,
- Basic meeting procedures,
- Determining the responsibilities of the Chair and how the position is elected,
- Administration of day-to-day operations of the Panel,
- General guidelines on individual members representing the Panel, and
- Other relevant policies.

Staff recommends that the Panel revisit and adjust the member manual on a regular review cycle (annual, every two years, etc.) to be determined at a later date.

ATTACHMENT:

- *Draft Member Handbook text*

RECOMMENDATION:

Approve the proposed Member Handbook text.

STAFF CONTACT:

Sonya Logman, Deputy Secretary, Business and Consumer Relations
Business, Consumer Services and Housing Agency
(916) 653-4090



CANNABIS CONTROL APPEALS PANEL

MEMBER HANDBOOK

Edmund G. Brown Jr., Governor
State of California

Alexis Podesta, Secretary
Business, Consumer Services and Housing Agency

PANEL MEMBERS

Sabrina Ashjian – Fresno County
Diandra Bremond – Los Angeles County
Adrian Carpenter – Yuba County
Vacant – Senate Rules Appointee
Vacant – Speaker of the Assembly Appointee

Cannabis Control Appeals Panel
801 Capitol Mall, Suite 601
Sacramento, CA 95814
www.ccap.ca.gov

DRAFT

INTRODUCTION

Brief History

In 1996, voters approved Proposition 215, which legalized the use of Medicinal cannabis in California. After the proposition was passed, most regulation was done by local governments. In 2015, the Legislature passed, and Governor Edmund G. Brown Jr. signed into law three bills (Assembly Bills 243 and 266, and Senate Bill 643) that create a licensing and regulatory framework for Medicinal cannabis through the Medical Cannabis Regulation and Safety Act. This legislation divided the responsibility for state licensing between three state entities – the California Department of Food and Agriculture, the California Department of Public Health and the Bureau of Cannabis Control – with the Bureau of Cannabis Control designated as the lead agency in regulating the cannabis industry in California.

In 2016, voters approved Proposition 64, the Adult-Use of Marijuana Act (AUMA). Under Proposition 64, adults 21 years of age or older, can legally grow, possess, and use cannabis for non-medicinal purposes, with certain restrictions. In addition, beginning on January 1, 2018, AUMA makes it legal to sell and distribute commercial cannabis through a regulated business. In June 2017, the California State Legislature passed a budget trailer bill, Senate Bill 94, that merged MCRSA and AUMA to create the Medicinal and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA). Under MAUCRSA, a single regulatory system governs the medicinal and adult-use cannabis industry in California.

Function of the Panel

The Cannabis Control Appeals Panel is responsible for appeals from any decision by state cannabis licensing authorities relating to the order of any penalty assessment, issuing, denying, transferring, conditioning, suspending or revoking any license provided under MAUCRSA.

PANEL MEMBERS

Authority

The Cannabis Control Appeals Panel was established by Business and Professions Code 26040 – 26047.

Membership

The Cannabis Control Appeals Panel shall consist of the following members:

- (A) One member appointed by the Senate Committee on Rules.
- (B) One member appointed by the Speaker of the Assembly.
- (C) Three members appointed by the Governor and subject to confirmation by a majority vote of all members elected to the Senate.

Each member, at the time of his or her initial appointment, shall be a resident of a different county from the one in which any of the other members reside.

Compensation

Members of the Panel shall receive an annual salary as provided for by Chapter 6 (commencing with [Section 11550](#)) of Part 1 of Division 3 of Title 2 of the Government Code.

Term

None. Each appointee serves at the pleasure of its appointing authority.

Removal

(B & P Code §26040(b))

The Governor can remove Governor's appointees without cause, while the Legislature can remove *any* appointee for dereliction of duty, corruption, or incompetency.

Resignation

(Government Code Section §1750(b))

If it becomes necessary for a Panel Member to resign, a letter shall be sent to the appropriate appointing authority (Governor's Office, Senate Rules Committee, or the Speaker of the Assembly) with the effective date of the resignation. Written notification is required by state law. A copy of this letter shall also be sent to the Panel Chair and the Executive Officer.

Conflict of Interest

(Government Code Section §87100)

No Panel Member may make, participate in making, or in any way attempt to use his or her official position to influence a governmental decision in which he or she knows or has reason to know he or she has a financial interest.

Any Panel Member who has a financial interest shall disqualify himself or herself from making or attempting to use his or her official position to influence the decision.

Any Panel Member who feels he or she is entering a situation where there is a potential for a conflict of interest should immediately consult the Executive Officer or the Panel's legal counsel.

Incompatible Activities

(Government Code §19990)

All Panel Members shall sign an incompatible activities statement. Governor's appointees will likely have already signed the Governor's incompatible activities statement and Agency's statement. and will be expected to adhere to the terms therein.

Within the first several months of being hired, the Assistant Chief Counsel for the Panel, or another staff attorney, should review the two incompatibility statements already signed by the Governor's appointees, and seek to develop a specific one for the Panel, to be executed by all members.

Social Media Presence

All Panel Members and Panel employees should become familiar with the Social Media Standard (SIMM 66B) put forth by the California Department of Technology at https://cdt.ca.gov/wp-content/uploads/2017/02/SIMM_66B.pdf. In general, Panel Members shall not speak on behalf of the Panel or state government unless otherwise authorized, and shall not share to the public or others on social media confidential or proprietary information held by the Panel or its Members or employees.

MEMBER ON-BOARDING & TRAINING

On-boarding

Panel members must submit the following no later than 30 days after their swearing-in:

1. Oath of Office – signed and dated
2. Form 700 – Statement of Economic Interest
3. Sexual Harassment Prevention Policy Memo and Acknowledgement Form
4. Non-Discrimination Policy and Complaint Procedures Policy Memo and Acknowledgement Form
5. Emergency Contact Information
6. Authorization to Use Privately Owned Vehicles on State Business (STD.261)
7. Payee Data Record (STD.204)

All original forms should be remitted to:

Executive Officer
Cannabis Control Appeals Panel
801 Capitol Mall, Suite 601
Sacramento, CA 95814

Required Trainings

Panel members must complete the required trainings within 30 days of their swearing-in:

- Bagley-Keene Open Meeting Act Training
- Ethics Training
 - Note: the certificate of completion should be provided to the Executive Officer.
- Sexual Harassment Prevention Training
 - To ensure compliance with Assembly Bill 1825 (Chapter 933, Statutes of 2004), Panel members are required to complete Sexual Harassment Prevention Training every two years.
- Defensive Driver Training

MEETING PROCEDURES

Panel Meetings

(Government Code § 11120 et seq.)

Being a member of the Panel is a serious commitment to the people of the State of California. Panel members are expected to attend all scheduled panel meetings. If a member is unable to attend, they must contact the Panel Chair or the Executive Officer and provide a written explanation of their absence.

Meetings are subject to all provisions of the Bagley-Keene Open Meeting Act (Act). This Act governs meetings of the state regulatory bodies and meetings of committees of those bodies where committee consists of more than two members. It specifies notice of meetings, agenda requirements, and prohibits discussing or acting on matters not included on the agenda. If the agenda contains matters which are appropriate for closed session, the agenda shall cite the statutory section and subdivision authorizing the closed session.

Through training given to the Panel, and on Panel Member's own initiative, Panel Members should become familiar with the general Bagley-Keene Act requirements, and they are required by law to receive a copy of the law, which will be done at the Panel's first public meeting. If Panel Members have questions about the law, they should contact the Panel's Assistant Chief Counsel or Agency Counsel for advice.

Agenda Items

Panel Members may submit agenda items for a future Panel meeting during the "Future Agenda Items" section of a Panel meeting or directly to the Panel Chair. To the extent possible, the Panel Chair will calendar each Panel Member's request on a future Panel meeting.

In the event of a conflict, the Panel Chair shall make the final decision. The Panel Chair will work with the Executive Officer to finalize the agenda.

Notice of Meetings

(Government Code §11120 et seq,)

Meeting notices, including agendas, for Panel meetings will be sent to persons on the Panel's mailing list at least 10 calendar days in advance, as specified in the Bagley-Keene Open Meeting Act. The notice shall include name, work address, and work telephone number of a staff person who can provide further information prior to the meeting. Notices will also be posted online at www.ccap.ca.gov.

Record of Meetings

The business conducted in open session by the Panel can be recorded by a registered court reporter or audio recorded at the Panel's discretion.

In the alternative, minutes or a summary of the open session can be taken. They shall be prepared by Panel staff and submitted for review by Panel Members. Panel minutes or the summary will be considered and approved or disapproved at the next scheduled meeting of the Panel. When approved, the minutes shall serve as the official record of the meeting. The recordings of each Panel meeting shall be maintained and not destroyed.

Properly convened closed meetings also require by law to have minutes taken of the closed session.

Robert's Rules of Order

The Panel will use Robert's Rules of Order, to the extent that it does not conflict with state law (e.g., Bagley-Keene Open Meeting Act or other state laws or regulations), as a guide when conducting the meetings. Questions of order can be clarified by the Panel's legal counsel.

SELECTION OF OFFICERS

Officers of the Panel

The Panel shall elect a Chair at the first meeting of each calendar year. However, the first Chair elected through the process set forth below shall serve until the first meeting in the calendar year 2020.

Election of Chair

Election of the Chair shall occur annually at the first meeting of each year. The election can only occur with a quorum present.

A member must first announce his or her willingness to be Chair. Thereafter, that member(s) can be nominated by another member to be eligible to receive votes for Chair. Another member can nominate more than one candidate. A member cannot nominate themselves. If agreed upon by a majority of the members present, a candidate can give a short statement why he or she should be elected.

Votes are made publicly, and the candidate with the most votes become Chair, and assumes duties at the end of the public meeting. In the event of a tie, the Secretary of the Business, Consumer Services and Housing or his or her delegate, shall break the tie at the meeting, or in the next publicly noticed meeting. In the latter situation, the prior Chair shall retain his or her duties until the tie is broken.

Responsibilities of the Chair

The responsibilities of the Chair include but are not limited to:

- Coordinate regularly with the Executive Officer to be abreast of day-to-day operations.
- Manage each meeting of the Panel to ensure orderly and efficient review of each agenda item.
- Coordinate the annual review of the Executive Officer.
- Represent the Panel before external entities, at the request of the Executive Officer, as necessary.

Office Vacancies

If the office of the Chair becomes vacant, the Panel shall elect a new Chair at its first meeting after the vacancy occurs, if reasonably feasible.

PANEL ADMINISTRATION

Executive Officer

(B & P Code §26041)

The Panel shall appoint an Executive Officer. The Executive Officer is responsible for the financial operations and integrity of the Panel and is the official custodian of records. The Executive Officer is an at-will employee, who serves at the pleasure of the Panel, and may be terminated, with or without cause, in accordance with all applicable laws and certain provisions of the Bagley-Keene Open Meeting Act.

Executive Officer Evaluation

On an annual basis, the Executive Officer shall be evaluated by the Panel during a closed session. Panel members provide information to the Chair on the Executive Officer's performance in advance of this meeting.

Panel Staff

(B & P Code §26041)

Employees of the Panel are civil service employees. Their employment, pay, benefits, discipline, termination, and conditions of employment are governed by a myriad of civil service laws and regulations and often by collective bargaining agreements. The Executive Officer hired by the Panel is an exempt position, which serves under different rules than a standard civil servant. Because of this complexity, the Panel delegates this authority and responsibility for management of the civil service staff to the Executive Officer and legal staff as an instrument of the Panel.

Panel Members may express any staff concerns to the Executive Officer but shall refrain from involvement in any civil service matters. Panel Members shall not become involved in the personnel issues of any state employee.

REPRESENTATION ON BEHALF OF CCAP

General Rules of Conduct

All Panel Members shall act in accordance with their oath of office, and shall conduct themselves in a courteous, professional and ethical manner at all times. The Panel serves at the pleasure of the Governor and the Legislature, and shall conduct their business in an open manner, so that the public shall be both informed and involved, consistent with the provisions of the Bagley-Keene Open Meeting Act and all other governmental and civil codes applicable to similar boards within the State of California.

- Panel Members shall comply with all provisions of the Bagley-Keene Open Meeting Act.
- Panel Members shall not speak or act for the Panel without proper authorization.
- Panel Members shall not privately or publicly lobby for, publicly endorse, or otherwise engage in any personal efforts that would tend to promote their own personal or political views or goals, when those are in direct opposition to an official position adopted by the Panel.
- Panel Members shall not discuss personnel or Panel business matters outside their official capacity or outside a properly noticed and agendized meeting.
- Panel Members shall never accept gifts from appellants, commercial cannabis licensees, or related members of the cannabis industry while serving on the Panel.
- Panel Members shall maintain the confidentiality of confidential documents and information related to Panel business.
- Panel Member shall comply with all applicable incompatible activities statements they serve under.
- Panel Members shall recognize the equal role and responsibilities of all Panel Members.
- Panel Members shall act fairly, be nonpartisan, impartial, and unbiased in their roles of protecting the public and enforcing MAUCRSA.
- Panel Members shall treat all individuals in a fair, professional, courteous and impartial manner.
- Panel Members' actions shall serve to uphold the principle that the Panel's primary mission is to protect the public.
- Panel Members shall not use their positions on the Panel for personal, familial, or financial gain.

Panel Member Written Correspondence and Mailings

All correspondence, press releases, articles, memoranda or any other communication written by any Panel Member in his or her official capacity, and regarding matters under the jurisdiction or responsibility of the Panel, must be provided to the Executive Officer in advance of publication. The Executive Officer will retain a copy in a chronological file.

Contact with Licensees and Appellants

Panel Members shall not intervene on behalf of a licensee or appellant for licensure for any reason. They should forward all contacts or inquiries to the Executive Officer.

Communications with Other Organizations, Individuals & Media

All communications relating to any Panel action or policy to any individual, organization or media shall be made only by the Panel Chair, his or her designee, or the Executive Officer.

Any Panel Member who is contacted by any of the above should inform the Panel Chair or Executive Officer of the contact immediately.

All correspondence shall be issued on the Panel's standard letterhead and will be disseminated by the Executive Officer's office.

Business Cards

Business cards will be provided to each Panel Member with the Panel's name, address, telephone numbers, and website address.

OTHER POLICIES & PROCEDURES

Ex Parte Communication

(Government Code Section 11430.10 et seq.)

The Government Code contains provisions prohibiting ex parte communications. An "ex parte" communication is a communication to the decision-maker made by one party to an enforcement action without participation by the other party. While there are specified exceptions to the general prohibition, the key provision is found in subdivision (a) of section 11430.10, which states:

"While the proceeding is pending, there shall be no communication, direct or indirect, regarding any issue in the proceeding to the presiding officer from an employee or representative of an agency that is a party or from an interested person outside the agency, without notice and an opportunity for all parties to participate in the communication."

Occasionally, an applicant who is being formally denied licensure, or a licensee against whom disciplinary action is being taken, will attempt to directly contact Panel Members. If the communication is written, the person should read only far enough to determine the nature of the communication. Once he or she realizes it is from a person against whom an action is pending, they should reseal the documents and send them to the Executive Officer.

If a Panel Member receives a telephone call from an applicant under any circumstances or licensee against whom an action is pending, he or she should immediately tell the person they cannot speak to them about the matter and inform the Executive Officer and the Panel's legal counsel.

If the person insists on discussing the case, he or she should be told that the Panel Member will be required to recuse him or herself from any participation in the matter. Therefore, continued discussion is of no benefit to the applicant or licensee.

If a Panel Member believes that he or she has received an unlawful ex parte communication, he or she should contact the Executive Officer and the Panel's legal counsel.

Service of Legal Documents

If a Panel Member is personally served as a party in any legal proceeding related to his or her capacity as Panel Member, he or she must contact the Executive Officer immediately.

Honoraria Prohibition

(Government Code Section 89503 and FPPC Regulations, Title 2, Division 6)

As a rule, members of the Panel should decline honoraria for speaking at, or otherwise participating in, professional association conferences and meetings. A member of a state panel is precluded from accepting an honorarium from any source, if the member would be required to report the receipt of income or gifts from that source on his or her statement of economic interest.

Panel Members are required to report income from, among other entities, professional associations and continuing education providers. Therefore, a Panel Member should decline all offers for honoraria for speaking or appearing before such entities.

There are limited exceptions to the honoraria prohibition. The acceptance of an honorarium is not prohibited under the following circumstances:

- (1) An honorarium is returned to the donor (unused) within 30 days;
- (2) an honorarium is delivered to the State Controller within 30 days for donation to the General Fund (for which a tax deduction is not claimed); and
- (3) an honorarium is not delivered to the Panel Member, but is donated directly to a bona fide charitable, educational, civic, religious, or similar tax exempt, non-profit organization.

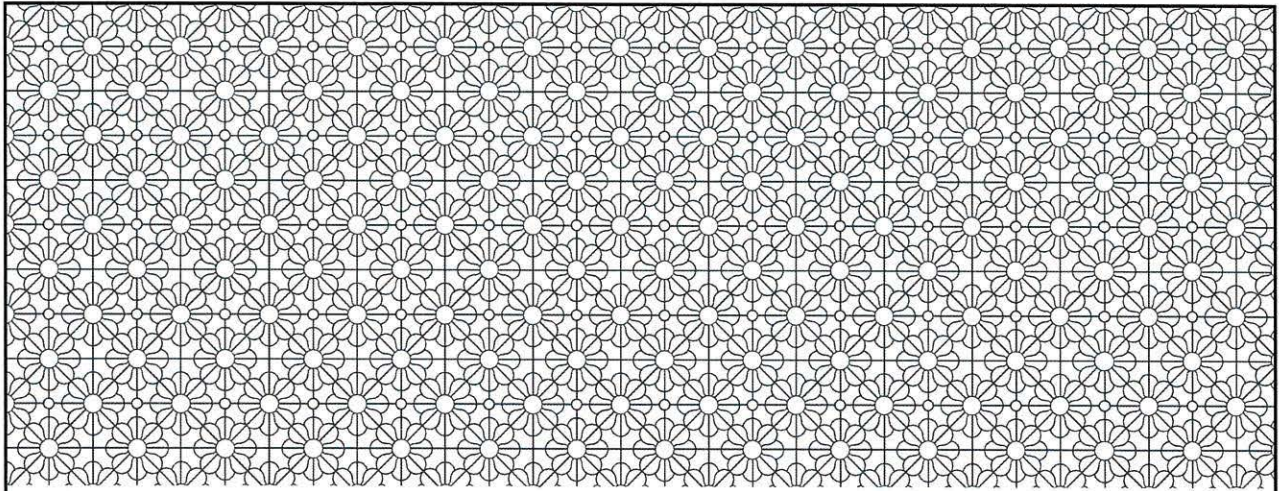
Considering this prohibition, members should report all offers of honoraria to the Panel Chair so that he or she, in consultation with the Executive Officer and staff counsel, may determine whether the potential for conflict of interest exists.

AGENDA ITEM 7

**THERE IS NO BOARD PACKAGE
MATERIAL FOR ITEM 7**

AGENDA ITEM 8

INFORMATIONAL PRESENTATION: OVERVIEW OF THE ADMINISTRATIVE PROCEDURES ACT



ADMINISTRATIVE PROCEDURES ACT

PETER M. WILLIAMS
DEPUTY SECRETARY — GENERAL COUNSEL
BUSINESS, CONSUMER SERVICES AND HOUSING AGENCY

 CANNABIS
CONTROL
APPEALS
PANEL

RULEMAKING 101

What is the Administrative Procedures Act?

- The Administrative Procedures Act (APA) is a set of statutes in the Government Code that provide the process by which a state agency shall adopt, amend, and repeal its regulations.

 CANNABIS
CONTROL
APPEALS
PANEL

RULEMAKING 101

What is a regulation?

- “Regulation” means every rule, regulation, order, or standard of general application or the amendment, supplement, or revision of any rule, regulation, order, or standard adopted by any state agency to implement, interpret, or make specific the law enforced or administered by it, or to govern its procedure.

(Government Code § 11342.600)



RULEMAKING 101

What is the Office of Administrative Law?

The Office of Administrative Law (OAL) is the state agency charged with enforcing the rulemaking portions of the APA, and provides two primary functions:

- 1) Reviews regulations to ensure the substantive and procedural requirements of the APA are met prior to filing the regulation with the Secretary of State; and
- 2) Reviews and makes determinations on petitions challenging state agency action as underground regulations.



RULEMAKING 101

What is an “underground regulation?”

- An underground regulation is any regulation issued, utilized, enforced, or any guideline, criterion, bulletin, manual, instruction, order, standard of general application, or other rule attempted to be enforced that has not been adopted in compliance with the APA.
(Government Code § 11340.5(a))



RULEMAKING PROCESS

- The Panel directs proposed regulations to be noticed
- A Notice Package is prepared and submitted to OAL
- 45-Day Public Comment Period
- Modifications to the text (if any) are proposed and published
- 15-Day Public Comment Period



RULEMAKING PROCESS

- The Panel votes to officially adopt, amend, or repeal its regulation(s)
- Final Rulemaking Package is prepared and submitted to OAL
- 30 business day review
- Regulation is filed with the Secretary of State and becomes effective



WHAT OAL REVIEWS FOR

- **Authority** – Did the Legislature give you the authority to adopt the regulation? (Government Code § 11349)
- **Reference** – What statute, court decision, or other provision of law is the Panel implementing, interpreting, or making specific by creating this regulation? (Government Code § 11349(e))



WHAT OAL REVIEWS FOR

- **Consistency** – Is the regulation in harmony with, and not in conflict with or contradictory to, existing statutes, court decisions, or other provisions of law? (Government Code § 11349(d))
- **Clarity** – Is the regulation written or displayed so that the meaning will be easily understood by those persons directly affected by it? (Government Code § 11349(c))



WHAT OAL REVIEWS FOR

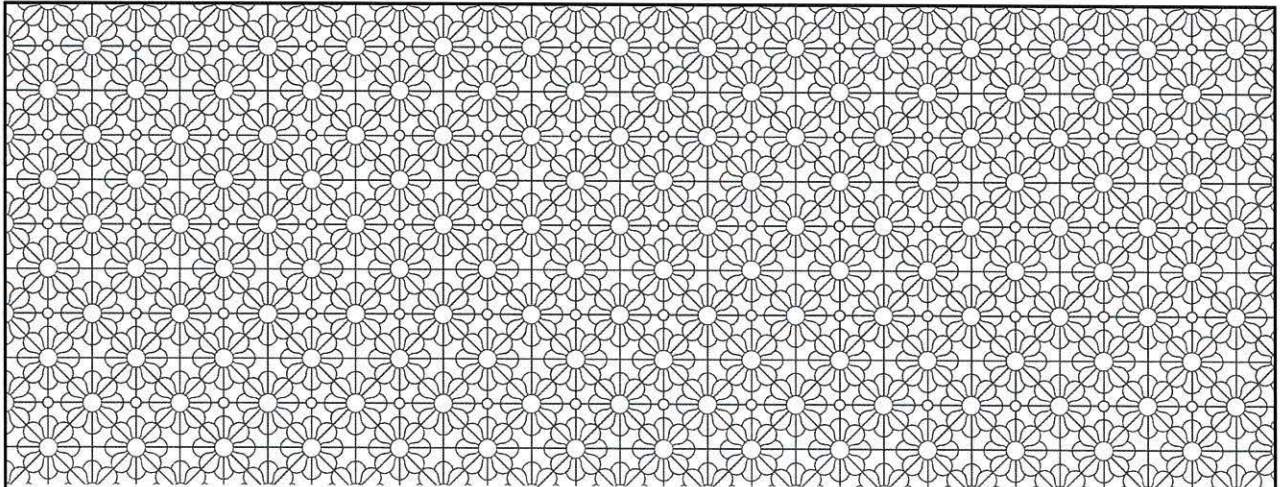
- **Nonduplication** – Does the regulation serve the same purpose as a state or federal statute or another regulation? (Government Code § 11349(f))
- **Necessity** – Does the record of the regulation demonstrate by substantial evidence the need for the regulation to effectuate the purpose of the statute, court decision, or other provision of law that the regulation implements, interprets, or makes specific, taking into account the totality of the record? (Government Code § 11349(a))



CCAP REGULATIONS

The Panel's authority to adopt regulations comes from Business and Professions Code § 26042, which states:

"The panel shall adopt procedures for appeals similar to the procedures used [by the Alcohol Beverage Appeals Board]. Such procedures shall be adopted in accordance with the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code)."



QUESTIONS?



OAL CHECKLIST REGULAR APA RULEMAKING

OAL File No. _____ - _____ - _____

Agency: _____

Reviewer: _____

Due Date: _____

(All citations are to the Government Code, unless otherwise specified. CCR means California Code of Regulations.)

<u>REQUIREMENT</u>	<u>OK?</u>		<u>PROBLEMS</u>
1. FORM 400 (1 CCR 6)			
Is the name of rulemaking agency in AGENCY WITH RULEMAKING AUTHORITY box? (1 CCR 6(b)(10))	Y	N	
Is the subject described in SUBJECT OF REGULATION(S) box? (1 CCR 6(b)(1))	Y	N	
Was the rulemaking action submitted within 1 year of publication date of notice? (11346.4(b))	Y	N	
<i>If from an agency in Department of Consumer Affairs, has the period been extended per Business & Professions Code 313.1(e)?</i>	Y	NA	N
Are all SECTIONS AFFECTED and TITLES listed? (1 CCR 6(b)(2))	Y	N	
Is the TYPE OF FILING correctly indicated? (1 CCR 6(b)(3))	Y	N	
CERTIFICATE OF COMPLIANCE FILING ONLY:			
Is the box in B.3. on Form 400 marked, or appropriate equivalent certification in the file? (11346.1(e)) <i>NOTE: If Department of Corrections and Rehabilitation (CDCR) file, skip remainder of this block and see next block below.</i>	Y	NA	N
For an emergency adoption, repeal or amendment:			
Was certification submitted to OAL within 180 days of effective date of initially adopted emergency regulations? (11346.1(e) and 11349.6(b))	Y	NA	N
OR			
Is there a special statute for more or less time?	Y	NA	N
For an emergency readoption:			
<i>If certification is filed during first readoption, was it submitted to OAL within 90 days of the effective date of the first readoption? (11346.1(h) and 11349.6(b))</i>	Y	NA	N
<i>If certification is filed during second readoption, was it submitted to OAL within 90 days of effective date of second readoption? (11346.1(h) and 11349.6(b))</i>	Y	NA	N
<i>NOTE: If not submitted within the required time period, it may be necessary to prepare Notice to adopting agency and Order of Reprinting or Deletion so that the regulation as it existed prior to the emergency adoption, repeal or amendment thereupon becomes effective. (11346.1(e)-(g))</i>			

CERTIFICATION OF COMPLIANCE FOR CDCR FILE:			
<i>For an emergency adoption, repeal or amendment:</i>			
Was it submitted to OAL within 160 days of effective date of emergency regulations? (Penal Code sec. 5058.3(a)(1))	Y	NA	N
<i>For an emergency readoption:</i>			
<i>If certification is filed during first readoption</i> , was it submitted to OAL within 90 days of effective date of first readoption? (11346.1(h); 11349.6(b) and Penal Code sec. 5058.3(a)(1))	Y	NA	N
<i>If certification is filed during second readoption</i> , was it submitted to OAL within 90 days of effective date of second readoption? (11346.1(h); 11349.6(b) and Penal Code sec. 5058.3(a)(1))	Y	NA	N
ONLY FOR MODIFIED REGULATIONS AND/OR WHEN MATERIAL IS ADDED TO RULEMAKING FILE:			
Does it identify the beginning and ending dates of all public availability periods? (1 CCR 6(b)(4))	Y	NA	N
Is the EFFECTIVE DATE designated? (1 CCR 6(b)(5)), (11343.4(a))	Y		N
Is the effective date specifically prescribed by an underlying statute? (11343.4(b)(1))	Y	NA	N
<i>If early effective date is requested</i> , is a written request demonstrating good cause included? (11343.4(b)(3))	Y	NA	N
<i>If later effective date prescribed by agency</i> , is this in a written instrument filed with, or as part of, the regulation? (11343.4(b)(2))	Y	NA	N
Is a different effective date required for Fish and Game Commission regulation either pursuant to article 1 (commencing with section 200) of chapter 2 of division 1 of the Fish and Game Code or in order to conform to a federal regulation?	Y	NA	N
ONLY WHEN NOTICE TO, REVIEW, CONSULTATION, APPROVAL, OR CONCURRENCE BY ANOTHER AGENCY IS REQUIRED BY STATUTE (1 CCR 6 (b)(6)):			
Is designated agency indicated in B.6.?	Y	NA	N
Is the name of agency CONTACT PERSON and TELEPHONE NUMBER included? (1 CCR 6(b)(7))	Y		N
Does it include the SIGNATURE OF AGENCY HEAD OR DESIGNEE ? Note: Designee must be listed in a signed delegation order in rulemaking file or on file with OAL. (1 CCR 6(b)(8))	Y		N
Is it dated? (1 CCR 6(b)(8)(D))	Y		N
Is the name and title typed? (11343(g), 1 CCR 6(b)(8)(E))	Y		N
2. FINAL REGULATION TEXT			
Is the final regulation text attached to the original Form 400 and to the six copies of the Form 400 (7 total copies of text)? (11343; 1 CCR 6(a))	Y		N

INCORPORATION BY REFERENCE (1 CCR 20)			
Are any document(s) or form(s) mentioned in the regulations that have a regulatory effect?	Y		N
<i>--If "no," go to block "REGULATION TEXT" below.</i>			
<i>--If "yes," is the agency incorporating them by reference?</i>	Y	NA	N
<i>-- If "no," all provisions in the document or form must either be: (1) in existing regulation(s) or statute(s); or (2) in the proposed regulation to be printed in the CCR.</i>			
<i>--If "yes," are the document(s) or form(s) attached to the original Form 400 for filing with the Secretary of State?</i>	Y	NA	N
<i>Note: Six duplicate copies of document incorporated by reference not required for formal publication reasonably available from commonly known or identified source (1 CCR 20(d)). Also, see block on "Incorporation by Reference" in #13: Final Statement of Reasons.</i>			
• Is the title of the document or form clearly set out in the text?	Y	NA	N
• Is there a statement in the text that specifically identifies which portions of document/form are incorporated?	Y	NA	N
• If document(s) or form(s) that are incorporated are being amended, are the changes clearly indicated by underline/strikeout?	Y	NA	N
• Is there a statement in the proposed text that includes the revision date (or other specific identifier) of the particular version incorporated?	Y	NA	N
<i>Exception: No date required if authorizing statute requires adoption/enforcement of incorporated provision and any subsequent amendments.</i>			
REGULATION TEXT			
Do(es) the regulation section number(s) fit into the CCR?	Y		N
Are Authority and Reference citations included with the final text? (1 CCR 8(a)(1))	Y		N
Does the underlying text (and Authority and Reference cites) match what is printed in the CCR? (11344)	Y	NA	N
Does the final text show changes to the CCR in underline/italic and strikeout format for additions and deletions; if adoption of new final text, then clearly indicated that all is to be added to CCR? (1 CCR 8(b))	Y		N
<i>Note: For Certification of Compliance filings, the final text will be the same as the express terms (originally proposed text) if there were no post-notice modifications, but will not include the underline/strikeout indicating the emergency changes.</i>			

Is the final text a Building Standard? (<i>Definition for Building Standard and exceptions are in Health & Safety Code 18909(a)-(j).</i>)	Y	NA	N
--If "yes:"			
--Has the Building Standards Commission been contacted? (Health & Safety Code 18942.1)	Y	NA	N
--Has the final text been approved and filed pursuant to Health & Safety Code 18938?	Y	NA	N
RESUBMITTAL FILING ONLY:			
<i>Previously Disapproved Regulations Only:</i>			
Pursuant to 11349.4(b), limit review to: (1) reasons expressly identified in disapproval decision; or (2) issues arising from substantial change to provisions, or intervening statutory change or court orders/decisions.			
<i>If substantive provisions are not significantly changed (11349.4(a)):</i>			
--Was it resubmitted within 120 days of agency's receipt of decision of disapproval? OR	Y	NA	N
--Was an extension granted by Director for good cause?	Y	NA	N
<i>If substantive provisions are significantly changed OR regulation is not resubmitted within 120 days:</i>			
--Has the agency readopted the regulation, complied with Article 5, §11346 et seq. and resubmitted it within one year of the publication date of notice? (11349.4(a))	Y	NA	N
<i>Withdrawn Regulations Only:</i>			
Was it resubmitted within 1 year of publication date of notice? (11346.4(b))	Y	NA	N
<i>Previously Disapproved AND Withdrawn Regulations (11349.4(c)):</i>			
Is a transmittal memo included (1 CCR 84) which:			
--Identifies prior file by date of submission? AND	Y	NA	N
--Specifies parts of prior record incorporated in the resubmittal?	Y	NA	N
Is agency submitting a copy of the prior record, <i>if returned</i> ?	Y	NA	N
3. TABLE OF CONTENTS/AFFIDAVIT OR DECLARATION OF CLOSURE (11347.3(b)(12))			
Is a Table of Contents/Index included in the rulemaking file?	Y		N
Does it identify each item in rulemaking file?	Y		N
Is an Affidavit/Declaration under penalty of perjury included in the rulemaking file?	Y		N
--Does it state that the rulemaking file is closed and complete?	Y		N

--Is the date file closed included?	Y	N
--Is closure date later than the date of all documents in the rulemaking file?	Y	N
4. NOTICE OF PROPOSED RULEMAKING		
Is a NOTICE included in the rulemaking file? (11347.3(b)(2))	Y	N
HEARING:		
<i>If a hearing is scheduled</i> , is time, place and nature of proceeding included in the Notice? (11346.5(a)(1))	Y	NA N
<p>--If "yes," go to "Written Comment Period" block below. Also, see # 8: <i>Transcripts, Recording, or Minutes.</i></p>		
<i>If no hearing is scheduled</i> , is information on opportunity to request one included? (11346.5(a)(17))	Y	NA N
--Was a hearing timely requested?	Y	NA N
--If "no," go to "Written Comment Period" block below.		
--If "yes:"		
--Is request included in rulemaking file? (11346.8(a); 11347.3(b)(6))	Y	NA N
--Was notice mailed to the extent practicable? (11346.8(a))	Y	NA N
WRITTEN COMMENT PERIOD:		
Does Notice contain the date written comment period closes? (11346.5(a)(15))	Y	N
Were there at least 45 days (or other time period specified by statute) between publication date and hearing/close of written comment period? (11346.4(a))	Y	N
AUTHORITY and REFERENCE:		
Are citations included? (11346.5(a)(2); 1 CCR 14)	Y	N
INFORMATIVE DIGEST/ POLICY STATEMENT OVERVIEW (11346.5(a)(3)):		
Is the format similar to the Legislative Counsel's digest?	Y	N
Is it in plain English?	Y	N
Does it include a clear and concise summary of existing laws and regulations, <i>if any</i> , related directly to the proposed rulemaking? (11346.5(a)(3)(A))	Y	NA N
Does it describe the effect of the proposed rulemaking? (11346.5(a)(3)(A))	Y	N
Does it include a policy statement overview explaining the broad objectives of the regulation? (11346.5(a)(3)(C))	Y	N

Does it explain the specific benefits anticipated from the proposed action, including, to the extent applicable, nonmonetary benefits such as the protection of public health and safety, worker safety, or the environment, the prevention of discrimination, the promotion of fairness or social equity, and the increase in openness and transparency in business and government? (11346.5(a)(3)(C))	Y		N
Does it include an evaluation of whether the proposed regulation is inconsistent/incompatible with existing state regulations? (11346.5(a)(3)(D))	Y		N
<i>If there is a substantial difference from existing, comparable federal regulation or statute, are significant differences briefly described?</i> (11346.5(a)(3)(B))	Y	NA	N
-- <i>If “yes,”</i> is a full citation to federal regulation or statute included? (11346.5(a)(3)(B))	Y	NA	N
<i>If document(s) or form(s) are incorporated by reference, are they listed by title and date?</i> (1 CCR 20(c)(3))	Y	NA	N
NOTE: Include in the FSR a demonstration of the need to print the incorporated by reference document(s)/form(s) in the CCR. (1 CCR 20(c)(1))			
MANDATED BY FEDERAL LAW OR REGULATIONS: <i>If adopting or amending regulations on this basis that are identical to previously adopted or amended federal regulation, is a statement included to that effect, together with a citation to where an explanation of the provisions of the regulation can be found?</i> (11346.2(c) and 11346.9)	Y	NA	N
-- <i>If “yes,”</i> this is sufficient to satisfy the ISR requirements of 11346.2(b) and the FSR requirements of 11346.9. (Review of # 7: ISR and # 13: FSR is not necessary.)			
OTHER STATUTORY REQUIREMENTS: Are there any requirements identified in the Notice that are specific to the agency or type of regulation? (11346.5(a)(4))	Y	NA	N
LOCAL MANDATE (11346.5(a)(5)): Is a determination (policy or expenditure) included as to whether a mandate is imposed on local agency or school district that requires reimbursement pursuant to Section 17500 et seq.?	Y		N
--Is a mandate imposed?	Y		N
• <i>If “yes,”</i> is reimbursement required pursuant to Section 17500 et seq.?	Y	NA	N
<i>Note: If regulation results in reimbursable cost to local agency /school district, OAL must disapprove unless information specified in 11349.1(d)(3) on source of funds is included in rulemaking file. See Part 10: Form 399 Fiscal Impact).</i>			

<p>FISCAL IMPACT (11346.5(a)(6)): Are the following estimates prepared in accordance with DOF instruction (SAM 6601-6616) included:</p> <p>--Cost to any local agency or school district requiring reimbursement pursuant to section 17500 et seq.?</p> <p>--Costs or savings to any state agency?</p> <p>--Other non-discretionary cost or savings imposed upon local agencies?</p> <p>--Costs or savings in federal funding to the state?</p>	<p>Y N</p> <p>Y N</p> <p>Y N</p> <p>Y N</p>
<p>HOUSING COSTS (11346.5(a)(12)): <i>If agency makes initial determination of significant effect on housing costs, is a statement of that effect included?</i></p>	<p>Y NA N</p>
<p>SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESS, INCLUDING ABILITY TO COMPETE (11346.3(a); 11346.5(a)(7)): <i>If agency makes initial determination that proposal may have such an impact, does the determination:</i></p> <p>--Identify the types of businesses affected?</p> <p>--Describe projected compliance requirements?</p> <p>--Solicit proposed alternatives using 11346.5(a)(7)(C) boilerplate language?</p> <p><i>If agency makes initial determination that proposal will not have such an impact, does notice make a declaration to that effect? (11346.5(a)(8))</i> <i>If "yes," check ISR for the following requirements to support this determination: Facts, evidence, documents, testimony or other evidence relied upon. (11346.2(b)(5))</i></p>	<p>Y NA N</p> <p>Y NA N</p> <p>Y NA N</p> <p>Y NA N</p>
<p>STATEMENT OF THE RESULTS OF THE ECONOMIC IMPACT ASSESSMENT (EIA) <u>OR</u> THE STANDARDIZED REGULATORY IMPACT ANALYSIS (SRIA) (11346.5(a)(10) and 11346.3(b) and (c)) Is a statement of the results of the EIA included? OR <i>If a major regulation, is a statement of the results of the SRIA included?</i></p> <p><i>If EIA, do these results specify whether and to what extent the proposed regulation will affect:</i></p> <ul style="list-style-type: none"> • Creation of jobs within California • Elimination of jobs within California • Creation of new businesses within California • Elimination of existing businesses within California 	<p>Y NA N</p> <p>Y NA N</p> <p>Y NA N</p> <p>Y NA N</p> <p>Y NA N</p> <p>Y NA N</p> <p>Y NA N</p> <p>Y NA N</p>

<ul style="list-style-type: none"> • Expansion of businesses currently doing business within the state 	Y	NA	N
<ul style="list-style-type: none"> • Benefits of the regulation to the health and welfare of California residents, worker safety, and the state's environment 	Y	NA	N
<i>If SRIA, do these results address the following</i>			
<ul style="list-style-type: none"> • Creation of jobs within California 	Y	NA	N
<ul style="list-style-type: none"> • Elimination of jobs within California 	Y	NA	N
<ul style="list-style-type: none"> • Creation of new businesses within California 	Y	NA	N
<ul style="list-style-type: none"> • Elimination of existing businesses within California 	Y	NA	N
<ul style="list-style-type: none"> • Competitive advantages or disadvantages for businesses currently doing business within the state 	Y	NA	N
<ul style="list-style-type: none"> • Increase or decrease of investment in the state 	Y	NA	N
<ul style="list-style-type: none"> • Incentives for innovation in products, materials, or processes 	Y	NA	N
<ul style="list-style-type: none"> • Benefits of the regulations, including, but not limited to, benefits to the health, safety, and welfare of California residents, worker safety, and the state's environment and quality of life, among any other benefits identified by the agency 	Y	NA	N
<i>If SRIA, has the agency summarized DOF comments, if any, submitted to the agency pursuant to 11346.3(f) and responded to those comments?</i>	Y	NA	N
COST IMPACTS ON REPRESENTATIVE PERSON OR BUSINESS (11346.5(a)(9)):			
Is a description included of all cost impacts known to the agency that a representative person or business would necessarily incur in reasonable compliance with the proposed action?	Y	NA	N
<i>If no cost impacts are known to the agency does the notice state: "The agency is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action?"</i>	Y	NA	N
BUSINESS REPORT (11346.5(a)(11); 11346.3(d)):			
Does the regulation require a report to be made?	Y		N
Does the report requirement apply to business?	Y	NA	N
--If "yes", is there a finding that it is necessary for the health, safety, or welfare of the people of the state that the regulation applies to business?	Y	NA	N

<p>SMALL BUSINESS (1 CCR 4(a) and (b)):</p> <p>Is a statement included that proposed action does/does not affect small businesses? (1 CCR 4(a))</p> <p>--Is a brief explanation included of reason for “does not affect” determination? (1 CCR 4(b))</p>	<p>Y N</p> <p>Y NA N</p>
<p>ALTERNATIVES INFORMATION (11346.5(a)(13)):</p> <p>Does the notice include a statement similar to the following: [Name of rulemaking agency] must determine that no reasonable alternative considered by the agency or that has otherwise been identified and brought to the attention of the agency:</p> <p>--Would be more effective in carrying out the purpose for which the action is proposed;</p> <p>-- Would be as effective and less burdensome to affected private persons than the proposed action; or</p> <p>--Would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.</p> <p>NOTE: Any alternatives and reasons for rejecting them must be described in the Initial Statement of Reasons. The determination referred to above regarding each of the bullets must be in the Final Statement of Reasons.</p>	<p>Y NA N</p> <p>Y N</p> <p>Y N</p> <p>Y N</p>
<p>CONTACT PERSON (11346.5(a)(14)):</p> <p>Is the name and telephone number of agency representative and designated backup contact person listed?</p>	<p>Y N</p>
<p>AVAILABILITY STATEMENTS (11346.5(a)(16)):</p> <p>Are the following statements included:</p> <p>--Availability of express terms?</p> <p>--Availability of initial statement of reasons?</p> <p>--Availability of information upon which proposed rulemaking is based? (11346.5(b); 11346.2(a))</p> <p>--Availability of substantial changes to original proposal for at least 15 days prior to agency adoption/repeal/amendment of resulting regulation? (11346.5(a)(18))</p>	<p>Y N</p> <p>Y N</p> <p>Y N</p> <p>Y N</p>
<p>FINAL STATEMENT OF REASONS (11346.5(a)(19)):</p> <p>Is a statement included explaining how to get a copy of the final statement of reasons?</p>	<p>Y N</p>
<p>INTERNET ACCESS (11346.4(a)(6); 11346.5(a)(20)):</p> <p>Is a statement included explaining how materials published or distributed on the agency’s Internet website, <i>if the agency has one</i>, can be accessed?</p>	<p>Y N</p>

5. ORIGINALLY PROPOSED TEXT (Express Terms)			
Is the originally proposed text included in the rulemaking file? (11347.3(b)(10))	Y		N
Does the underlying text match existing regulation text printed in the CCR? (11344; 11346.2 (a)(3))	Y	NA	N
Are all proposed changes to the CCR, including Authority and Reference citations, in underline/italic, strikeout format? (11346.2 (a)(2) and (3))	Y		N
6. MAILING STATEMENT FOR 45-DAY NOTICE			
Is the mailing statement included in rulemaking file? (11346.4(a)(1)-(4); 1 CCR 86)	Y		N
Is it adequate? (11346.4(a)(1)-(4); 1 CCR 86)	Y		N
7. INITIAL STATEMENT OF REASONS (ISR)			
Is ISR included in the rulemaking file? (11347.3(b)(2))	Y		N
Does it state the problem the agency intends to address? (11346.2(b)(1))	Y		N
Does it include a statement of the specific purpose of each adoption, amendment, or repeal? (11346.2(b)(1))	Y		N
Does it state the rationale for the agency's determination that each adoption, amendment, or repeal is reasonably necessary to carry out the purpose(s) of the statute(s) or other provision(s) of law that the action is implementing, interpreting or making specific AND to address the problem for which it is proposed? (11346.2(b)(1)) (11349(a))	Y		N
Is each regulation provision covered? (1 CCR 10(b))	Y		N
<u>Economic Impact Assessment or Standardized Regulatory Impact Analysis (11346.3(a)(3)):</u>			
<u>If a non-major regulation where Notice of Proposed Rulemaking was published before 1/1/2015</u> , is the Economic Impact Assessment (EIA) prepared pursuant to 11346.3(b) and 1) identified and included in the body of the ISR, <i>OR</i> 2) identified in the ISR as a report relied upon by the agency in proposing the proposed regulatory action?	Y	NA	N
<i>If yes</i> , does the EIA contain an assessment of all the required elements pursuant to 11346.3(b)(1)(A) through (D)?	Y	NA	N
<u>If a non-major regulation where Notice of Proposed Rulemaking was published on or after 1/1/2015</u> , is the EIA prepared pursuant to 11346.3(b) and identified and included in the body of the ISR?	Y	NA	N
<i>If yes</i> , does the EIA contain an assessment of all the required elements pursuant to 11346.3(b)(1)(A) through (D)?	Y	NA	N
<u>If a major regulation</u> , is the Standardized Regulatory Impact Analysis (SRIA) included in the body of the ISR?	Y	NA	N

<i>If yes, does the SRIA assess all the required elements pursuant to 11346.3(c)(1)(A) through (F)?</i>	Y	NA	N
<i>Also, if yes, does the SRIA include the methods and details by which the agency sought public input regarding alternatives? (1 CCR 2001(d))</i>	Y	NA	N
Does it identify every other technical, theoretical or empirical study, report, or similar document relied upon, <i>if any</i> , by the agency in proposing the proposed regulatory action? (11346.2(b)(3))	Y	NA	N
Does it state the benefits anticipated from the regulatory action, including the benefits or goals provided in the authorizing statute? These may include non-monetary benefits such as protection of public health and safety, worker safety, or the environment, prevention of discrimination, promotion of fairness or social equity, or providing for openness and transparency in business and government, etc. (11346.2(b)(1))	Y	NA	N
Does it describe reasonable alternatives to the regulatory action proposed by the agency, <i>if any</i> , including alternatives that would lessen any adverse impact on small business? (11346.2(b)(4)(B))	Y	NA	N
<i>--If the agency rejects these alternatives, does it explain the agency's reasons for rejecting them, including reasons for rejecting alternatives that would lessen any adverse impact on small business?</i>	Y	NA	N
Does it describe alternatives, <i>if any</i> , proposed as less burdensome and equally effective in achieving the purposes of the regulation in a manner that achieves the purposes of the statute or other law being implemented and explain a reason for rejecting each such alternative? (An agency may state that no such alternative has been proposed.) (11346.2(b)(4)(A))	Y		N
If the proposed regulatory action mandates the use of specific technologies or equipment, or prescribes specific actions or procedures, then the agency shall consider a performance standard as an alternative, AND explain why the agency believes these mandates or prescriptive standards are required. If this applies, does the agency indicate consideration of a performance standard and explain reason for using a prescriptive standard? (11340.1(a); (11346.2(b)(1); (11346.2(b)(4)(A))	Y	NA	N
Does it include facts, evidence, documents, testimony, or other evidence relied upon to support initial determination in the notice that the regulation WILL NOT have a significant adverse economic impact on business? (11346.2(b)(5))	Y	NA	N
<i>If agency under Cal-EPA, Natural Resources Agency or Fire Marshal (11346.2(b)(6)):</i>			
<i>--Does it describe efforts to avoid unnecessary duplication or conflict with the Code of Federal Regulations (CFR)?</i>	Y	NA	N

--Does it include a finding that differing regulations are authorized by law, or that cost is justified by benefit?	Y	NA	N
8. TRANSCRIPT, RECORDING, OR MINUTES			
<i>If public hearing is held:</i>			
Is transcript/recording/minutes included in rulemaking file? (11347.3(b)(8))	Y	NA	N
--If transcript or recording, is it verbatim? (1 CCR 90(b))	Y	NA	N
--If minutes, are they sufficiently detailed to indicate objections and recommendations made? (1 CCR 90(c))	Y	NA	N
<i>If a board or commission meeting is required to adopt the regulation:</i>			
Does the transcript/recording/minutes demonstrate that board or commission with rulemaking authority adopted the regulation(s) after complying with public availability requirements? (11346.8, 11347.3(b)(8); 1 CCR 90(a))	Y	NA	N
Does final text (including any substantial changes) match text expressly adopted by board or commission? (11346.8(a) and (c))	Y	NA	N
<i>If scheduled public hearing continued or postponed, was there adequate notice of resumption? (11346.8(b))</i>	Y	NA	N
9. POST-NOTICE MODIFICATIONS			
REGULATION TEXT:			
Are there differences between originally noticed text (express terms) and final text submitted to OAL? (11346.8(c))	Y		N
--If “no,” go to “Availability of Relied Upon Material” block below in this part			
--If “yes,” are all changes <i>nonsubstantial</i> (1 CCR 40) or <i>solely grammatical</i> ? (11346.8(c))	Y	NA	N
<ul style="list-style-type: none"> • If “no,” is modified text of regulation included in rulemaking file? (11347.3(a)(10)) 	Y	NA	N
<ul style="list-style-type: none"> • If “yes,” go to “Availability of Relied Upon Material” block below in this part. 			
Does the modified text show the full text of regulation as originally proposed with proposed changes clearly indicated? (1 CCR 44; 1 CCR 46)	Y	NA	N
Are all <i>substantial</i> changes (1 CCR 40) <i>sufficiently related</i> to the original proposal? (11346.8(c); 1 CCR 42)	Y	NA	N
--If “yes,” notice and 15-day comment period required on changes that <i>are sufficiently related</i> . (11346.8(c))			
--If “no,” notice and new 45-day comment period required on changes that <i>are not sufficiently related</i> . (11346.4; 11346.8(c))			

NOTICE OF 15-DAY COMMENT PERIOD(S):			
Is the 15-day Notice included in the rulemaking file? (11347.3(a)(2))	Y	NA	N
Does Notice state the period within which comments will be received? (1 CCR 44(a))	Y	NA	N
Was it mailed with full text of regulation, with proposed changes clearly indicated? (1 CCR 44(a))	Y	NA	N
<i>If newly incorporated document or form is included</i> , is it identified by title and date of publication or issuance? (1 CCR 20(c)(3))	Y	NA	N
SECTION 44 CONFIRMING STATEMENT			
(1 CCR 44(b), (c) and (d) and 11347.3(b)(9)):			
Is the confirming statement included in the rulemaking file?	Y	NA	N
Does it make the following statements:			
--That agency complied with the requirements of 1 CCR 44?	Y	NA	N
--The beginning and ending dates for the availability period? (1 CCR 44 (b) and (d))	Y	NA	N
--The date that notice and proposed text were mailed? (1 CCR 44(b))	Y	NA	N
<i>If no persons to mail to</i> , is statement included to confirm this? (1 CCR 44(c))	Y	NA	N
AVAILABILITY OF RELIED UPON MATERIAL OR ANY DOCUMENT ADDED TO THE RECORD AFTER NOTICE (11347.1)			
Was any relied upon material or document added to the rulemaking file after publication of notice (and not identified in the ISR or otherwise made available)? <i>NOTE</i> : This is also applicable if any substantive changes are made to a document already in the record, except the UID and FSR.	Y	NA	N
<i>--If "no," go to # 10: Form 399 (Fiscal Impact).</i>			
<i>--If "yes,"</i> was material/document/revised document made available for at least 15 days as required by 11347.1?	Y	NA	N
<i>--If "no,"</i> OAL must disapprove or agency withdraws file.			
<i>--If "yes,"</i> is Notice included in rulemaking file?	Y	NA	N
• Does Notice identify added material/document/revised document and location where they are available? (11347.1(b))	Y	NA	N
Is a statement confirming compliance with notice requirements, including the date the notice was mailed, in the record? (11347.1(e))	Y	NA	N
<i>If no persons to mail to</i> , is a statement included to confirm this? (11347.1(f))	Y	NA	N

10. FORM 399 (FISCAL IMPACT)			
Is the Fiscal Impact portion of Form 399 included in the rulemaking file? (11346.5 (a)(6))	Y		N
Is the Fiscal Impact portion of Form 399 properly filled out and signed by the Agency Secretary or, if rulemaking agency is not under an Agency Secretary, by the highest ranking official in the agency? (SAM 6614)	Y		N
Is DOF concurrence required? (SAM 6615)	Y		N
--If "yes," is DOF signature included?	Y	NA	N
Are computations leading to dollar estimate, <i>if any</i> , and supporting data included in the rulemaking file? (11349.1(d)(1); SAM 6607)	Y	NA	N
Has DOF been notified if the rulemaking file was returned to the agency pursuant to 11349.1(d) for lack of proper estimates? (11349.1(e))	Y	NA	N
11. OTHER MATERIAL IN RULEMAKING FILE			
Is a Petition, <i>if any</i> , proposing regulatory change included? (11340.7; 11347.3(b)(1))	Y	NA	N
Does the rulemaking file contain public comments and other information received:			
--During 45 day comment period?	Y	NA	N
--During 15 day comment period(s), <i>if any</i> ?	Y	NA	N
--In connection with proposed rulemaking at other times? (11347.3(b)(6))	Y	NA	N
Is all material/documents relied upon by the agency included in the rulemaking file? (11347.3(b)(7))	Y	NA	N
Is any other information, statement, report or data which the agency is required to consider or prepare included in the rulemaking file? (11347.3(b)(11))	Y	NA	N
Is there evidence in the record that the agency has taken into account vehicle weight impacts and the ability of vehicle manufacturers or vehicle operators to comply with laws limiting the weight of vehicles? (11343.3)	Y	NA	N
<i>If proposed regulations are any of the following:</i>			
--All regulations proposed by the Department of Rehabilitation;			
--Disability access compliance regulations that must be submitted to the California Building Standards Commission;			
--Special education regulations proposed by the State Department of Education; or			
--Medi-Cal regulations proposed by the State Department of Health Care Services—			

then, upon request from a person with a visual disability or other disability for which effective communication is required under state or federal law, the agency shall have provided a narrative description of the additions to, and deletions from, the California Code of Regulations or other publication and any portion of the surrounding language necessary to understand the change in a manner that allows for accurate translation by reading software used by the visually impaired. (11346.6(b))			
Has any such request been made? (11347.3(b)(11))	Y	NA	N
<i>If "yes:" Does the record include a copy of the request?</i>	Y	NA	N
Does the agency indicate the date that the information was provided?	Y	NA	N
Did the agency provide at least 45 days from the date the information was provided during which the requester could submit public comment?	Y	NA	N
<i>If any such comments were submitted, does the rulemaking file contain these public comments?</i>	Y	NA	N
NOTE: Notice and 45 day comment period is required for such a request which can be made at any time prior to filing the rulemaking with the Secretary of State. (11346.6(d) and (e))			
<i>If agency is a board, commission or committee within the Department of Consumer Affairs (DCA), has the agency included a certification that it has complied with Bus. & Prof. Code 313.1 and either DCA director has approved the regulation or the agency board/commission/committee has overridden director's disapproval by unanimous vote? (Bus. & Prof. Code 313.1(e)(3))</i>	Y	NA	N
12. UPDATED INFORMATIVE DIGEST (UID)			
Is UID included in the rulemaking file? (11347.3(b)(2))	Y		N
Does it include a clear and concise summary of immediately preceding laws and regulations, <i>if any</i> , directly related to the proposed rulemaking action and its effect? (11346.9(b))	Y	NA	N
<i>If summary is necessary, is the format is similar to the Legislative Counsel Digest? (11346.9(b))</i>	Y	NA	N
<i>If the applicable laws have not changed and the agency has made no changes to the regulations that impact on its effect, there is no need to reiterate the information in the Informative Digest of the Notice. Instead, OAL suggests including a statement such as: "There have been no changes in applicable laws or to the effect of the proposed regulations from the laws and effects described in the Notice of Proposed Action."</i>			

13. FINAL STATEMENT OF REASONS (FSR)			
Is FSR included in the rulemaking file? (11346.9(a))	Y		N
Does FSR update information in ISR? (11346.9(a)(1))	Y		N
Does the update identify any material relied upon that was not available for public review prior to close of public comment period(s)?	Y	NA	N
--If "yes," was new 15-day notice and comment period provided? (11346.9(a)(1) and 11347.1) (See "Availability of Relied Upon Material" block above in # 9)	Y	NA	N
Does FSR include a determination whether the regulations impose a mandate upon local agencies/school districts? (11346.9(a)(2))	Y		N
--Is a mandate imposed?	Y		N
--If "yes," is a statement included whether it is reimbursable under 17500-17630?	Y	NA	N
--If "not reimbursable," is the reason why included?	Y	NA	N
Does it include a determination, with supporting evidence, that no reasonable alternative considered by the agency or that has otherwise been identified and brought to the attention of the agency: (11346.9(a)(4))			
--Would be more effective in carrying out the purpose for which the action is proposed;	Y		N
-- Would be as effective and less burdensome to affected private persons than the proposed action; or	Y		N
--Would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.	Y		N
If the agency rejected proposed alternatives that would lessen any adverse economic impact on small business, does the agency explain its reasons for rejecting them? (11346.9(a)(5))	Y	NA	N
--If such explanation is necessary, does the agency include supporting information regarding the benefits of the proposed action (specific benefits anticipated by the proposed adoption, amendment or repeal, including, to the extent applicable, nonmonetary benefits such as protection of the public health and safety, worker safety, or the environment, the prevention of discrimination, the promotion of fairness or social equity, and the increase in openness and transparency in business and government). (11346.9(a)(5))	Y	NA	N

INCORPORATION BY REFERENCE			
Was/were the document(s) or form(s) available upon request from the agency, or reasonably available from a commonly known or specified source? (1 CCR 20(c)(2))	Y	NA	N
--If “no,” does the regulation specify how a copy may be obtained? (1 CCR 20(c)(2))	Y	NA	N
Does FSR demonstrate that publication of incorporated document in full in CCR would be cumbersome, unduly expensive, or otherwise impractical? (1 CCR 20(c)(1))	Y	NA	N
SUMMARY AND RESPONSE TO COMMENTS:			
Is a SUMMARY of each comment received during a comment period specifically directed at the proposed regulation or at procedure followed by the agency included? (11346.9(a)(3))	Y	NA	N
Is a RESPONSE explaining how proposal was amended to accommodate comment OR explaining a reason for rejecting comment included? (11346.9(a)(3))	Y	NA	N
--Are reasons included for rejecting proposed alternatives to lessen impact on small business, <i>if any</i> ? (11346.9(a)(5))	Y	NA	N
14. SUBSTANTIVE REQUIREMENTS			
AUTHORITY (11349(b); 11342.1; 11342.2; 1 CCR 14):			
Are citations specific, accurate and complete?	Y		N
Is there express or implied statutory or constitutional authority to adopt, amend or repeal the proposed regulation?	Y		N
Are there any public comments challenging the agency’s “authority”? (1 CCR 14(c)(1)(B))	Y		N
Does the regulation alter, amend, or enlarge a statute? (1 CCR 14(c))	Y		N
Does a statute provide specific authority to impose fine or imprisonment, or both? (11145)	Y	NA	N
<i>If intended to promote fire and panic safety or provide fire protection and prevention, including fire suppression systems, equipment or alarms, has it been approved by State Fire Marshal? (11359(a))</i>	Y	NA	N
--If “no,” is the regulation expressly required to be at least as effective as federal standards pursuant to 11359(b)?	Y	NA	N
REFERENCE (11349(e); 1 CCR 14(b)):			
Are citations specific, accurate and complete?	Y		N
CONSISTENCY (11342.2, 11349(d)):			
Is the regulation consistent with statutes enforced or administered by submitting agency?	Y		N
Do the regulations conflict with the Public Records Act? (Government Code 6250-6270)	Y	NA	N

Do the regulations conflict with the Information Practices Act? (Civil Code 1798)	Y	NA	N
Are the regulations consistent with other applicable statutes or regulations?	Y	NA	N
CLARITY (11349(c); 1 CCR 16): Does the regulation use language correctly, including spelling, grammar and punctuation?	Y		N
Does the regulation use citation styles that clearly identify published material?	Y	NA	N
Does the regulation present information that is readily understandable by those directly affected?	Y		N
Can the regulation on its face be reasonably and logically interpreted to have more than one meaning?	Y		N
Does the language of the regulation conflict with the agency's description of the effect of the regulation?	Y		N
Does the regulation use terms that do not have meaning generally familiar to those directly affected (and the terms aren't defined in the regulation or governing statute)?	Y		N
NONDUPLICATION (11349(f), 11346.2(c), 11346.9(c); 1 CCR 12): Does the regulation repeat or rephrase in whole or in part a state or federal statute or regulation?	Y		N
--If "yes," do any of these exceptions apply: Exceptions (1 CCR 12 (b)): (1) Necessary to satisfy clarity standard --Is justification as specified in 1 CCR 12 (b)(1) included?	Y	NA	N
(2) Federally mandated regulation (1 CCR 12 (b)(2)) --Does agency meet requirements of 11346.9(c) and 11346.2(c)?	Y	NA	N
(3) Mandated or authorized by provision of law --Statement identifying duplicated or overlapped statute or regulation and provision of law in citation style which permits or mandates duplication or overlap is included? (1 CCR 12 (b)(3)(A) and (B))	Y	NA	N
NECESSITY (11349(a); 1 CCR 10): Does the record demonstrate by substantial evidence that each provision is reasonably necessary to effectuate the purpose of the provision of law it implements, interprets, or makes specific? See #7: <i>Initial Statement of Reasons</i> .	Y		N
If submitted by CalEPA or a rulemaking entity within CalEPA, are scientific portions of the regulation peer reviewed? (Health & Safety Code 57004)	Y	NA	N

AGENDA ITEM 9

DISCUSSION AND ACTION
REGARDING
PROPOSED REGULATION TEXT
TO ESTABLISH APPEALS
PROCEDURES AND TIMELINE

CANNABIS CONTROL APPEALS PANEL

STAFF REPORT

REGULAR PANEL MEETING

AUGUST 13, 2018

SUBJECT: Proposed Regulation Text to Establish Appeals Procedures and Timeline

BACKGROUND:

Business and Professions Code 26042 requires the Panel to adopt procedures for appeals similar to those made by the Alcoholic Beverage Control Appeals Board (Board), as outlined in Article 3 (commencing with Section 23075) and Article 4 (commencing with Section 23080) of Chapter 1.5 of Division 9 of the Business and Professions Code.

- *ARTICLE 3. The Alcoholic Beverage Control Appeals Board [23075 - 23077]* establishes the Board in state government under the Business, Consumer Services, and Housing Agency, notes that all personnel are under the direction of the Board and refers back to the authority the Board is vested under the California Constitution.
- *ARTICLE 4. Appeals from Decisions of the Department [23080 - 23089]* more specifically outlines how any party aggrieved by a final decision may file with the Board. The section of law outlines how documents shall be delivered, specific timelines that must be followed, how the board derives revenue through surcharges on annual fees, and how final orders may be reviewed by the courts.

Business and Professions Code 26042 also requires the Panel to adopt procedures in accordance with the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code). The regular rulemaking process under the Administrative Procedures Act includes comprehensive public notice and comment requirements. This comprehensive process is intended to create an adequate rulemaking record for review by the Office of Administrative Law and the courts.

ANALYSIS:

In consulting the relevant Articles required by law, Deputy Secretary and General Counsel Williams has drafted proposed regulation text to establish Title 16, Division 43.

ATTACHMENT:

- *Draft proposed regulation text*

RECOMMENDATION:

Approve the proposed regulation text and authorize Business, Consumer Services & Housing Agency staff to (1) complete and submit the rulemaking package to the Office of Administrative Law (OAL) to formally notice the proposed regulations and schedule a hearing on the rulemaking to establish regulations under Title 16, Division 45 of the California Code of Regulations and (2) make non-substantive changes to the language as needed.

STAFF CONTACT:

Peter M. Williams, Deputy Secretary and General Counsel
Business, Consumer Services and Housing Agency
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CANNABIS CONTROL APPEALS PANEL OF CALIFORNIA
TITLE 16. CALIFORNIA CODE OF REGULATIONS
DIVISION 43. CANNABIS CONTROL APPEALS PANEL
ARTICLE 1. GENERAL
PROPOSED ADOPTION OF
RULE 6000. DEFINITIONS

6000. Definitions.

For purposes of this division:

- (a) "Appellant" means any person who files an appeal with the Panel.
- (b) "Days" means calendar days, unless otherwise stated.
- (c) "Executive director" means the executive director of the Panel.
- (d) "Licensing authority" means a state agency responsible for the issuance, renewal, or reinstatement of a license, or a state agency authorized to take disciplinary action against a licensee, as defined in Business and Professions Code § 26001(aa).
- (e) "Panel" means the Cannabis Control Appeals Panel of California.
 - (1) Any reference to the Panel's "Sacramento office" means 801 Capitol Mall, Suite 500, Sacramento, CA 95814.
- (f) "Party" means the licensing authority, the appellant, and any person, other than an officer or an employee of the licensing authority in his official capacity, who has been allowed to appear in the proceeding before the licensing authority.
- (g) Unless otherwise stated, the words "appellant" or "party" include the attorney or other authorized agent of such person.

Note: Authority cited: Section 26042, Business and Professions Code.

Reference: Sections 26042 and 26043, Business and Professions Code.

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CANNABIS CONTROL APPEALS PANEL OF CALIFORNIA
TITLE 16. CALIFORNIA CODE OF REGULATIONS
DIVISION 43. CANNABIS CONTROL APPEALS PANEL
ARTICLE 1. GENERAL
PROPOSED ADOPTION OF
RULE 6001. TIME AND DATE CALCULATIONS

6001. Time and Date Calculations.

(a) The time provided by this division within which any act must be performed shall be computed by excluding the first day and including the last day, unless it is a Saturday, Sunday, or holiday, in which case the last day shall also be excluded.

Note: Authority cited: Section 26042, Business and Professions Code.

Reference: Sections 26042 and 26043, Business and Professions Code.

CANNABIS CONTROL APPEALS PANEL OF CALIFORNIA
TITLE 16. CALIFORNIA CODE OF REGULATIONS
DIVISION 43. CANNABIS CONTROL APPEALS PANEL
ARTICLE 1. GENERAL
PROPOSED ADOPTION OF
RULE 6002. NOTICES TO AUTHORIZED AGENTS

6002. Notices to Authorized Agents.

(a) Whenever the Notice of Appeal indicates that a party is represented by an attorney or other authorized agent, such attorney or agent shall be entitled to a copy of all notices and decisions to which the party would be entitled.

Note: Authority cited: Section 26042, Business and Professions Code.

Reference: Sections 26042 and 26043, Business and Professions Code.

CANNABIS CONTROL APPEALS PANEL OF CALIFORNIA
TITLE 16. CALIFORNIA CODE OF REGULATIONS
DIVISION 43. CANNABIS CONTROL APPEALS PANEL
ARTICLE 2. FILING OF APPEAL
PROPOSED ADOPTION OF
RULE 6003. TIMING AND CONTENTS OF NOTICE OF APPEAL

6003. Timing and Contents of Notice of Appeal.

(a) Any person aggrieved by the decision of a licensing authority as described in Business and Professions Code section 26043(a) may appeal the licensing authority's written decision to the Panel as follows:

(1) The appellant shall complete and submit the CCAP Form 6003, Notice of Appeal (New 04/18), which is hereby incorporated by reference, to the Panel at its Sacramento office or by scanning and emailing the completed form to the Panel at appeals@ccap.ca.gov.

(2) The Notice of Appeal must be received by the Panel within 30 days after the last day on which reconsideration of the underlying decision can be requested to the licensing authority pursuant to Government Code section 11521.

(A) Failure to submit the Notice of Appeal to the Panel within the time set forth in this subsection may result in dismissal of the appeal pursuant to section 6011.

(3) The appellant shall also serve a copy of the completed Notice of Appeal upon all parties to the proceeding. Such service shall be made by delivering or mailing a copy of the Notice of Appeal to each party, and proof of service shall be submitted to the Panel at the same time the Notice of Appeal is submitted pursuant to subsection (a)(1).

The parties may stipulate in writing to provide service to one another via electronic mail, and such service shall be indicated on the proof of service.

Note: Authority cited: Section 26042, Business and Professions Code.

Reference: Sections 26042 and 26043, Business and Professions Code.

CANNABIS CONTROL APPEALS PANEL OF CALIFORNIA
TITLE 16. CALIFORNIA CODE OF REGULATIONS
DIVISION 43. CANNABIS CONTROL APPEALS PANEL
ARTICLE 3. RECORD ON APPEAL
PROPOSED ADOPTION OF
RULE 6004. SUBMITTING THE RECORD

6004. Submitting the Record.

(a) From the date the Notice of Appeal is submitted to the Panel, the appellant shall have 60 days to obtain the complete underlying administrative record from the Office of Administrative Hearings, pursuant to 1 CCR 1038, and submit the original and five copies to the Panel at its Sacramento office. Failure to submit a complete administrative record within the time set forth in this subsection may result in dismissal of the matter pursuant to section 6011.

(1) Notwithstanding the foregoing, if all parties to the appeal so stipulate in writing, and the Panel approves, the appellant may submit only those parts of the administrative record relevant to the issue being appealed. In such event, the Panel may still require submission of the complete administrative record at any time during the appeal.

(b) If the underlying administrative hearing was audiotaped, the appellant shall arrange to have it transcribed prior to submission of the administrative record to the Panel. The complete transcript shall be included with the administrative record at the time of submission to the Panel in accordance with subsection (a).

(c) The appellant shall also serve a copy of the complete administrative record upon all parties to the proceeding. Such service shall be made by delivering or mailing a

copy of the administrative record to each party, and proof of service shall be submitted to the Panel at the same time the administrative record is submitted pursuant to subsection (a).

(d) An appellant may, for good cause, request an extension of the 60-day limit set forth in subsection (a). Such extensions shall be granted or denied by the Panel in its discretion, or the Panel may delegate this authority to its executive director. Alternatively, parties may stipulate in writing to one extension of up to 20 days, which shall be granted by the Panel, or its executive director if so authorized, upon notice to the Panel of the stipulation.

Note: Authority cited: Section 26042, Business and Professions Code.

Reference: Sections 26042 and 26043, Business and Professions Code.

CANNABIS CONTROL APPEALS PANEL OF CALIFORNIA
TITLE 16. CALIFORNIA CODE OF REGULATIONS
DIVISION 43. CANNABIS CONTROL APPEALS PANEL
ARTICLE 4. FILING BRIEFS
PROPOSED ADOPTION OF
RULE 6005. SERVICE AND FILING BY ELECTRONIC MAIL

6005. Service and Filing by Electronic Mail.

(a) Upon submission of a Notice of Appeal to the Panel, the appellant shall also complete and submit CCAP Form 6005, Certification of Email Address (New 04/18), which is hereby incorporated by reference, to the Panel at its Sacramento office or by scanning and emailing the completed form to the Panel at appeals@ccap.ca.gov.

(b) Upon receipt of service of the Notice of Appeal, all other parties to the appeal shall, within 30 days, complete and submit CCAP Form 6005, Certification of Email Address (New 04/18), to the Panel at its Sacramento office or by scanning and emailing the completed form to the Panel at appeals@ccap.ca.gov. At the same time, each party shall also serve a copy of their completed Form 6005, Certification of Email Address (New 04/18) on all other parties to the appeal, including the appellant.

(c) Once all parties to the appeal have submitted their CCAP Form 6005, Certification of Email Address (New 04/18), to the Panel, they may use each party's official email address, if one is provided, for service of correspondence, notices, pleadings, or any other documentation in connection with the appeal, unless a stipulation to the contrary has been agreed to.

(d) The Panel and its executive director may use each party's official email address, if one is provided, to send documents, notices, decisions, or any other correspondence to the party.

(e) Any party to an appeal that has submitted its CCAP Form 6005, Certification of Email Address (New 04/18) in accordance with subsection (a) or (b), may subsequently submit notices, pleadings, or any other documentation in connection with the appeal by electronic mail to the Panel at appeals@ccap.ca.gov unless instructed otherwise by the Panel or its executive director.

Note: Authority cited: Section 26042, Business and Professions Code.

Reference: Sections 26042 and 26043, Business and Professions Code.

CANNABIS CONTROL APPEALS PANEL OF CALIFORNIA
TITLE 16. CALIFORNIA CODE OF REGULATIONS
DIVISION 43. CANNABIS CONTROL APPEALS PANEL
ARTICLE 4. FILING BRIEFS
PROPOSED ADOPTION OF
RULE 6006. FILING OF BRIEFS BY PARTIES

6006. Filing of Briefs by Parties.

(a) The appellant may file an opening brief, the respondent may file an opposition brief, and the appellant may thereafter file a reply brief.

(b) All briefs shall be typewritten or printed upon paper 8½ x 11 inches in size, and all copies must be legible. Only one side of the paper shall be used and the margins shall not be less than one inch on all sides of the page. The lines shall be double spaced. Headings shall be capitalized. An original of each brief shall contain a certification that copies have been served upon or mailed to each party or his or her attorney or agent. Parties may serve one another by electronic mail in compliance with section 6005.

(c) Briefs shall comply with the following length restrictions; however the page limitations set forth in this subsection do not include exhibits, appendices, tables of contents, cover or title pages:

(1) Opening briefs shall be no more than 20 pages in length.

(2) Opposition briefs shall be no more than 20 pages in length.

(3) Reply briefs shall be no more than 10 pages in length.

(d) Any party to the appeal may file a motion in accordance with section 6010 to request a waiver of the page length restrictions in subsection (c). Such motions shall be submitted to the Panel and served on all other parties at least fifteen (15) days before the moving party's brief is due as set forth in subsection (c) of this section. An opposition to the motion may be submitted to the Panel and served on all other parties within five (5) days of the initial motion's service on the opposing party. The matter will be decided by the Panel without hearing.

(e) The opening brief shall be submitted to the Panel and served on all parties to the appeal within 30 days of the date the administrative record is served on the Panel and other parties pursuant to section 6004. Any opposition brief shall be submitted to the Panel and served on all parties within 15 days after the opening brief is served on the Panel and other parties. Any reply brief shall be submitted to the Panel and served on all parties within seven (7) days after the opposition brief is served on the Panel and other parties. Any party to the appeal may file a motion in accordance with section 6010 to request an extension of time within which to file a brief. Motions may only be granted by the Panel upon a showing of good cause.

Note: Authority cited: Section 26042, Business and Professions Code.

Reference: Sections 26042 and 26043, Business and Professions Code.

CANNABIS CONTROL APPEALS PANEL OF CALIFORNIA
TITLE 16. CALIFORNIA CODE OF REGULATIONS
DIVISION 43. CANNABIS CONTROL APPEALS PANEL
ARTICLE 5. HEARINGS
PROPOSED ADOPTION OF
RULE 6007. OPTIONAL HEARING

6007. Optional Hearing.

(a) After all briefs have been submitted to the Panel pursuant to section 6006, the Panel shall make a preliminary decision in the appeal based on the record. Once the Panel has reached its preliminary decision, the executive director shall notify all parties that the Panel is ready to enter its final order in accordance with section 6016. Each party shall have 20 days from the date they are served with the notice to submit a written request for a hearing to the Panel.

(b) Notwithstanding subsection (a), the Panel may direct for a hearing to be conducted on the appeal even if no party requests a hearing.

(c) If requested by a party or directed by the Panel, a hearing date and location shall be set by the Panel's executive director and a notice shall be sent to all parties.

(d) After a date and location has been set for hearing by the executive director, requests by any party for a continuance and/or location change may be granted by the Panel only upon a showing of good cause. The Panel may delegate its authority to decide requests for continuances and location changes to its executive director.

(1) A party seeking a continuance or location change shall stipulate to an alternative date or location for the hearing with all other parties to the appeal, and then coordinate with

the executive director to reschedule the date or location if the panel's schedule and docket permits. If the other party or parties will not stipulate to an alternative date or location, the party can submit a motion to the Panel requesting an alternative date or location in accordance with section 6010. The other party or parties may submit an opposition to the motion to the Panel within five (5) days of the initial motion's service on the opposing party.

Note: Authority cited: Section 26042, Business and Professions Code.

Reference: Sections 26042 and 26043, Business and Professions Code.

CANNABIS CONTROL APPEALS PANEL OF CALIFORNIA
TITLE 16. CALIFORNIA CODE OF REGULATIONS
DIVISION 43. CANNABIS CONTROL APPEALS PANEL
ARTICLE 5. HEARINGS
PROPOSED ADOPTION OF
RULE 6008. ORAL ARGUMENT

6008. Oral Argument

(a) In the event a hearing for the appeal or a motion is scheduled, and unless otherwise directed by the Panel:

- (1) A party shall be allowed a maximum of 20 minutes for oral argument;
- (2) Not more than one person on a side may be heard;
- (3) The appellant, or moving party, shall have the right to present an opening statement and closing statement; however, both statements shall count towards the 20-minute total limit.

Note: Authority cited: Section 26042, Business and Professions Code.

Reference: Sections 26042 and 26043, Business and Professions Code.

CANNABIS CONTROL APPEALS PANEL OF CALIFORNIA
TITLE 16. CALIFORNIA CODE OF REGULATIONS
DIVISION 43. CANNABIS CONTROL APPEALS PANEL
ARTICLE 6. NEW DISCOVERED EVIDENCE
PROPOSED ADOPTION OF
RULE 6009. NATURE OF EVIDENCE AND SHOWING

6009. Nature of Evidence and Showing.

(a) A party may file a motion to remand the case back to the licensing authority in accordance with Business and Professions Code section 26044 on the grounds that there is relevant evidence which, in the exercise of reasonable diligence, could not have been produced at the underlying hearing. In support of the motion, the party shall submit the following in the form of a declaration or affidavit:

(1) The substance of the newly-discovered evidence;

(2) Its relevancy and the part of the record to which it pertains;

(3) Names of witnesses to be produced and their expected testimony;

(4) The nature of any exhibits to be introduced;

(5) A detailed statement of the reasons why such evidence could not, with due diligence, have been discovered and produced at the underlying hearing. Merely cumulative evidence shall not constitute a valid ground for remand.

Note: Authority cited: Section 26042, Business and Professions Code.

Reference: Sections 26042, 26043, and 20644, Business and Professions Code.

CANNABIS CONTROL APPEALS PANEL OF CALIFORNIA
TITLE 16. CALIFORNIA CODE OF REGULATIONS
DIVISION 43. CANNABIS CONTROL APPEALS PANEL
ARTICLE 7. MOTIONS
PROPOSED ADOPTION OF
RULE 6010. MOTIONS

6010. Motions.

(a) Unless otherwise provided for, all motions referenced in this Division shall be prepared and submitted as follows:

(1) Motions shall follow the formatting requirements set forth in section 6006(b).

(2) Motions shall be no more than 10 pages in length unless accompanied by a declaration showing good cause for additional pages, but in no case shall be more than 15 pages.

(3) Motions submitted to the Panel shall include proof of service that the motion was served on all parties to the appeal or their attorneys by electronic or U.S. mail.

(b) Any party opposing a motion may submit their written opposition to the Panel within 5 days of receipt of service of the initial motion, with service on all other parties to the appeal. The opposition shall be no more than 10 pages in length unless accompanied by a declaration showing good cause for additional pages, but in no case shall be more than 15 pages.

(c) The Panel's executive director shall set a date and location for a hearing on the motion and send notice of the hearing to all parties to the appeal within 20 days of the deadline to submit the opposition described in subsection (b). Notwithstanding the foregoing, at any time after receiving the motion and opposition, the Panel may elect to rule on the motion

without holding a hearing.

Note: Authority cited: Section 26042, Business and Professions Code.

Reference: Sections 26042 and 26043, Business and Professions Code.

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CANNABIS CONTROL APPEALS PANEL OF CALIFORNIA
TITLE 16. CALIFORNIA CODE OF REGULATIONS
DIVISION 43. CANNABIS CONTROL APPEALS PANEL
ARTICLE 8. DISMISSAL OF APPEAL
PROPOSED ADOPTION OF
RULE 6011. DISMISSAL OF APPEAL

6011. Dismissal of Appeal.

(a) The Panel may issue an order dismissing an appeal and affirming the decision of the licensing authority:

(1) Upon appellant submitting to the Panel a request to dismiss the appeal;

(2) Upon motion of a party, or upon the Panel's own notice to the parties, that appellant has failed to perfect his or her appeal by failing to timely submit the Notice of Appeal or the administrative record to the Panel as set forth in sections 6003 and 6004;

(3) Upon certification by the licensing authority that reconsideration has been granted in the case after the Notice of Appeal has been submitted, and dismissal on this ground shall be without prejudice to the submission of a subsequent appeal in the same case.

(4) Upon a motion by the licensing authority or other party, or upon the Panel's own notice to the parties, where sufficient cause exists for dismissal. In such instance, the Panel's decision shall set forth with specificity the sufficient cause for the dismissal.

Note: Authority cited: Section 26042, Business and Professions Code.

Reference: Sections 26042, 26043, 26044, Business and Professions Code.

CANNABIS CONTROL APPEALS PANEL OF CALIFORNIA
TITLE 16. CALIFORNIA CODE OF REGULATIONS
DIVISION 43. CANNABIS CONTROL APPEALS PANEL
ARTICLE 9. PANEL MEMBERS
PROPOSED ADOPTION OF
RULE 6012. DISQUALIFICATION OF PANEL MEMBERS

6012. Disqualification of Panel Members.

(a) A Panel member shall disqualify himself or herself and withdraw from any case in which the member cannot accord a fair and impartial hearing. Any party may request the disqualification of any member by filing an affidavit before the submission of the case stating with particularity the grounds upon which it is claimed that a fair and impartial appeal cannot be accorded by the Panel member. The issue raised by the request shall be determined by the other members of the Panel. No member of the Panel shall withdraw voluntarily from any hearing, or be subject to disqualification, if this would prevent the Panel from acting in the particular case.

(b) An affidavit submitted to the Panel pursuant to this section shall become a part of the record.

Note: Authority cited: Section 26042, Business and Professions Code.

Reference: Section 26042 and 26043, Business and Professions Code.

CANNABIS CONTROL APPEALS PANEL OF CALIFORNIA
TITLE 16. CALIFORNIA CODE OF REGULATIONS
DIVISION 43. CANNABIS CONTROL APPEALS PANEL
ARTICLE 9. PANEL MEMBERS
PROPOSED ADOPTION OF
RULE 6013. ATTENDANCE OF PANEL MEMBERS

6013. Attendance of Panel Members.

(a) If a Panel member cannot attend a hearing where there will be oral testimony or argument, the remaining members of the Panel shall determine one other member to recuse himself or herself from the hearing in order to maintain an odd number of members unless to do so would prevent the Panel from acting in a particular case.

Note: Authority cited: Section 26042, Business and Professions Code.

Reference: Sections 26042 and 26043, Business and Professions Code.

CANNABIS CONTROL APPEALS PANEL OF CALIFORNIA
TITLE 16. CALIFORNIA CODE OF REGULATIONS
DIVISION 43. CANNABIS CONTROL APPEALS PANEL
ARTICLE 10. STAYS AND SETTLEMENTS
PROPOSED ADOPTION OF
RULE 6014. STAY

6014. Stay.

(a) In any appeal where the underlying decision of a licensing authority is denial of a license renewal, or cancelation, suspension, or revocation of a license, and upon a motion from the appellant made pursuant to section 6010, the Panel may stay the effect of the underlying decision until the Panel enters its final order.

(b) Notwithstanding subsection (a), the Panel may only grant a stay upon a motion by the appellant that demonstrates:

- (1) there is a substantial likelihood that the appellant will prevail in the appeal; and
- (2) the appellant will experience immediate and irreparable harm if the stay is not granted.

Note: Authority cited: Section 26042, Business and Professions Code.

Reference: Sections 26042 and 26043, Business and Professions Code.

TITLE 16. CALIFORNIA CODE OF REGULATIONS
DIVISION 43. CANNABIS CONTROL APPEALS PANEL
ARTICLE 10. STAYS AND SETTLEMENTS
PROPOSED ADOPTION OF
RULE 6015. SETTLEMENTS

6015. Settlements.

(a) Whenever any matter is pending before the Panel, and the parties to the matter agree upon a settlement, the Panel shall, upon the stipulation by the parties that such an agreement has been reached, remand the matter to the licensing authority.

Note: Authority cited: Section 26042, Business and Professions Code.

Reference: Sections 26042 and 26043, Business and Professions Code.

TITLE 16. CALIFORNIA CODE OF REGULATIONS
DIVISION 43. CANNABIS CONTROL APPEALS PANEL
ARTICLE 11. ORDERS
PROPOSED ADOPTION OF
RULE 6016. TIME LIMIT FOR ENTRY OF ORDER

6016. Time Limit for Entry of Order.

(a) In all cases, the Panel shall enter its order within 90 days after the hearing on the merits is held in accordance with section 6007. If no hearing is conducted, then the Panel shall enter its order within 90 days of the executive director's notice to the parties that the Panel has reached a preliminary decision in accordance with section 6007(a).

Note: Authority cited: Section 26042, Business and Professions Code.

Reference: Sections 26042 and 26043, Business and Professions Code.

TITLE 16. CALIFORNIA CODE OF REGULATIONS
DIVISION 43. CANNABIS CONTROL APPEALS PANEL
ARTICLE 11. ORDERS
PROPOSED ADOPTION OF
RULE 6017. TIME LIMIT FOR ENTRY OF ORDER

6017. Form of Order.

(a) Each order of the Panel on appeal from a decision of a licensing authority shall be in writing and shall be filed by delivering copies to the parties personally or by mailing copies to them by electronic or certified mail. Each such order shall become final upon being filed as provided herein, and there shall be no reconsideration or rehearing by the Panel.

Note: Authority cited: Section 26042, Business and Professions Code.

Reference: Sections 26042 and 26043, Business and Professions Code.

TITLE 16. CALIFORNIA CODE OF REGULATIONS
DIVISION 43. CANNABIS CONTROL APPEALS PANEL
ARTICLE 12. EX PARTE COMMUNICATIONS
PROPOSED ADOPTION OF
RULE 6018. EX PARTE COMMUNICATIONS

6018. Ex Parte Communications.

(a) While an appeal is pending there shall be no communication, direct or indirect, regarding any issue in the proceeding, to the Panel from any party to the appeal without notice and opportunity for all parties to participate in the communication.

(b) Nothing in this section precludes a communication made on the record at a hearing.

(c) Notwithstanding subsection (a), the following communications are permissible:

(1) Communications that are required for disposition of an ex parte matter specifically authorized by statute.

(2) Communications concerning a matter of procedure or practice that is not in controversy.

Note: Authority cited: Section 26042, Business and Professions Code.

Reference: Sections 26042 and 26043, Business and Professions Code.

NOTICE OF APPEAL

CCAP Form 6003 (New 04/18)

Directions: Any person aggrieved by the decision of a licensing authority denying the person's application for any license, denying the person's renewal of any license, placing any license on probation, imposing any condition on any license, imposing any fine on any license, assessing any penalty on any license, or canceling, suspending, revoking, or otherwise disciplining any license as provided for under Business and Professions Code Division 10, Cannabis, may appeal the licensing authority's written decision by completing this form and submitting to the Cannabis Control Appeals Panel in accordance with 16 CCR 6003.

Notice is hereby given that the party below appeals the decision rendered against them by a licensing authority, as authorized by Business and Professions Code section 26043.

Your Name: _____ License Number: _____

Address of Record: _____

Case Being Appealed: _____
(Provide case name and case number)

Licensing Authority: _____
(Provide the name of the licensing authority that issued the written decision against you)

Date of Written Decision: _____ Telephone Number: _____

Grounds for Appeal: (Check all boxes that describe the grounds for your appeal)

I am appealing the decision against me because:

- ☐ The licensing authority proceeded without or in excess of its jurisdiction.
- ☐ The licensing authority did not proceed in the manner required by law.
- ☐ The decision by the licensing authority is not supported by the findings.
- ☐ The findings are not supported by substantial evidence in light of the whole record.

Proof of Service: Pursuant to 16 CCR 6003(a)(3), any person submitting this form to the Cannabis Control Appeals Panel shall attach proof of service showing that a copy of this completed form has been served on all parties to this appeal, including the licensing authority that issued the underlying decision.

Certification of Email Address: Pursuant to 16 CCR 6005, any person submitting this form to the Cannabis Control Appeals Panel shall concurrently complete and submit CCAP Form 6005, Certification of Email Address (New 04/18).

Appellant Signature _____

Date _____

Print Name _____

CERTIFICATION OF EMAIL ADDRESS

CCAP Form 6005 (New 04/18)

Directions: Any person submitting a CCAP Form 6003, Notice of Appeal, to the Cannabis Control Appeals Panel shall at the same time complete and submit this form to the Panel, as required by 16 CCR 6005(a). Any other party to the appeal shall, within 60 days of receipt of a Notice of Appeal, complete and submit this form to the Panel and also serve a copy of the completed form to all other parties to the appeal, as required by 16 CCR 6005(b).

A. Case Information

Your Name or Agency: _____
(If you are submitting this form on behalf of a licensing authority, write the name of your agency)

I am the (check one):

- ☐ Appellant
- ☐ Respondent
- ☐ Other (Explain: _____)

Case Being Appealed: _____
(Provide case name and case number)

Licensing Authority: _____
(Provide the name of the licensing authority that issued the written decision in the underlying case)

B. Official Email Election

You have the option to provide an official email address for receiving service of all correspondence, notices, pleadings, decisions, and other documents related to the appeal described above. By checking the applicable box below and providing an official email address, you agree to receive such service by electronic mail from the Cannabis Control Appeals Panel and all other parties to the appeal. If you do not elect to provide an official email address, you must provide a mailing address by which you agree to receive service by mail.

- ☐ I agree to receive service of all documents in connection with this appeal at the official email address provided below.

Official Email Address: _____

- ☐ I DO NOT agree to receive service of documents in connection with this appeal by email. Please send all documents in connection with this appeal to the following physical address:

Physical Address: _____

Proof of Service: Pursuant to 16 CCR 6005(b), any person submitting this form to the Cannabis Control Appeals Panel shall also serve a copy of this completed form on all other parties to this appeal.

Signature

Date

Print Name

AGENDA ITEM 10

**THERE IS NO BOARD PACKAGE
MATERIAL FOR ITEM 10**

AGENDA ITEM 11

**DISCUSSION AND ACTION
REGARDING
2018 MEETING SCHEDULE**

CANNABIS CONTROL APPEALS PANEL

STAFF REPORT

REGULAR PANEL MEETING AUGUST 13, 2018

SUBJECT: 2018 Meeting Schedule

BACKGROUND:

As a matter of best practices, state bodies establish a calendar of meetings on an annual basis to inform the public and to help manage opportunities to directly engage with Panel staff. Some boards choose to host quarterly meetings, while others consistently meet on a specific day of the month.

Below is a sampling of meeting schedules:

- Alcohol Beverage Appeals Panel – meets once a month.
- Unemployment Insurance Appeals Board – meets on the third Wednesday of each month.
- State Personnel Board – meets once a month.
- Occupational Safety and Health Appeals Board – meets 2-4 times a month.
- Cannabis Advisory Committee – every other month, typically on the third Thursday.

PROPOSED SCHEDULE:

Date	Considerations + Possible Agenda Items
Tues, October 16, 2018	End of 45-day comment period / review comments Overview from licensing entities
Tues, November 20, 2018	Administrative updates
Tues, December 18, 2018	Possibly review final regulations

RECOMMENDATION:

Discuss and adopt a meeting schedule for the remainder of the 2018 calendar year.

STAFF CONTACT:

Sonya Logman, Deputy Secretary, Business and Consumer Relations
Business, Consumer Services and Housing Agency
(916) 653-4090

AGENDA ITEM 12

**THERE IS NO BOARD PACKAGE
MATERIAL FOR ITEM 12**

AGENDA ITEM 13

CLOSED SESSION

**THERE IS NO PUBLIC BOARD
PACKAGE MATERIAL FOR
ITEM 13(A) OR 13(B)**