

Introduced by Senator Ayala

December 19, 1996

An act to amend Sections 11123, 11124.1, 11125, 11125.1, 11125.2, 11125.5, 11125.7, 11126, 11126.3, 11130, 11130.3, 11130.7, and 11131 of, to add Sections 11121.95, 11122.5, and 11125.4 to, and to add and repeal Section 11123.2 of, the Government Code, relating to open meetings.

LEGISLATIVE COUNSEL'S DIGEST

SB 95, as introduced, Ayala. Open meetings.

The Bagley-Keene Open Meeting Act generally requires that the meetings of state bodies, as defined, be conducted openly.

This bill would define meeting for the purposes of that act. This bill would require any person appointed or elected to serve as a member of a state body who has not yet assumed the duties of office to conform his or her conduct to the act.

Under the act, a state body may hold an open or closed meeting by teleconference, as defined, under specified conditions. The authority to hold meetings by teleconference becomes inoperative January 1, 1998.

This bill would instead authorize a state body to use teleconferencing in connection with meetings or proceedings and would repeal that authority on January 1, 2001.

Under the act, any person attending an open and public meeting has the right to record the proceedings with a tape recorder.

This bill would authorize any person to record those meetings with an audio or videotape recorder, as specified,

would provide that any tape or film record of an open and public meeting by or at the direction of a state body is a public record, as specified, and would prohibit a state body from prohibiting or restricting the broadcast of its open and public meetings, as specified.

Existing law requires the state body to provide specified notice of its meetings, including an agenda.

This bill would require the agenda to include a description of the items of business to be transacted or discussed, including those items to be transacted or discussed in closed sessions.

Existing law specifies that agendas of public meetings and certain other writings distributed at those meetings are public records to be made available for public inspection.

This bill would revise provisions specifying when these writings become public records and are required to be made available for public inspection.

Existing law requires a state body to report publicly at a subsequent public meeting any action taken to appoint, employ, or dismiss a public employee in a closed session.

This bill would additionally require a state body to publicly report on various other types of actions taken in closed session. With respect to a closed session in the case of a disciplinary action by a state body that regulates or licenses a business or profession, the bill would permit the state body to delay reporting of the action until the next meeting and, upon a reasonable finding that disclosure of the votes and abstentions of individual members would expose them to a substantial risk of physical violence, omit those votes and abstentions from the report.

Existing law requires the state body to 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 bill would additionally provide that 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 on that item prior to action on the item. The bill would also provide that the state body



shall not prohibit public criticism of the policies, programs, services, acts, or omissions of the state body.

Existing law provides that in the case of an emergency situation, as defined, a state body may hold an emergency meeting without complying with the 10-day notice requirement.

This bill would revise the definition of emergency situation and would provide for special meetings under certain circumstances if the state body provides at least a 48-hour notice, as specified.

Existing law provides that no closed session may be held by any state body except as expressly authorized by the Bagley-Keene Open Meeting Act and existing law provides a number of express exceptions.

This bill would provide that the act shall not be construed to require the Franchise Tax Board to disclose any confidential tax information considered in closed sessions, as specified, nor to require the State Board of Equalization to disclose any action taken in closed session or documents executed in connection with that action when public disclosure is prohibited by specified laws.

Existing law requires a state body, prior to holding any closed session, to cite the authority for the closed session.

This bill would additionally require that after any closed session the state body shall reconvene in open session prior to adjournment to make specified disclosures of actions taken in closed session.

Existing law permits any interested person to commence an action for the purpose of stopping or preventing violations or threatened violations of the act or to determine the applicability of the act to actions or threatened future actions by members of a state body.

This bill would also permit the Attorney General or the district attorney to commence an action for these purposes and additionally permit those actions to determine the validity of rules or actions by a state body to penalize or otherwise discourage the expression of its members or to compel the state body to tape record its closed sessions.



Existing law permits any interested person to commence an action to obtain a judicial determination that an action taken by a state body relating to open meetings is null and void.

Existing law requires any action taken to obtain a judicial determination pursuant to this provision to be commenced within 30 days from the date the action was taken. A state body may cure or correct a challenged action.

This bill would also permit the Attorney General or the district attorney to commence an action for this purpose and would require the interested party to make a demand of the state body to cure or correct the action pursuant to a specified procedure prior to commencing an action. This bill would delete the 30-day time limit under which an action must be taken to obtain a judicial determination.

Existing law makes it a misdemeanor for a member of a state body to attend a meeting of the body in violation of the act with knowledge of the fact that the meeting is in violation of the act.

This bill would instead provide that it is a misdemeanor for a member of a state body to attend a meeting of that body in violation of the act where the member intends to deprive the public of information to which the member knows or has reason to know the public is entitled to under the act. By changing the definition of a crime this bill would impose a state-mandated local program.

Existing law provides that no state agency, as defined, 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.

This bill would additionally prohibit the conduct of those functions in any facility that is inaccessible to disabled persons or where members of the public may not be present without making a payment or purchase. This bill would further provide that no notice, agenda, announcement, or report required under the act need identify any victim or alleged victim of tortious sexual conduct or child abuse unless the identity of the person has been publicly disclosed.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated



by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 11121.95 is added to the
2 Government Code, to read:

3 11121.95. Any person appointed or elected to serve as
4 a member of a state body who has not yet assumed the
5 duties of office shall conform his or her conduct to the
6 requirements of this article and shall be treated for
7 purposes of this article as if he or she has already assumed
8 office.

9 SEC. 2. Section 11122.5 is added to the Government
10 Code, to read:

11 11122.5. (a) As used in this article, “meeting”
12 includes any congregation of a majority of the members
13 of a state body at the same time and place to hear, discuss,
14 or deliberate upon any item that is within the subject
15 matter jurisdiction of the state body.

16 (b) Nothing in this section shall impose the
17 requirements of this article upon any of the following:

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

20 (2) The attendance of a majority of the members of a
21 state body at an open and publicized meeting organized
22 by a person or organization other than the state body,
23 provided that a majority of the members do not discuss
24 among themselves, other than as part of the scheduled
25 program, business of a specific nature that is within the
26 subject matter jurisdiction of the state body.

27 (3) The attendance of a majority of the members of a
28 state body at an open and noticed meeting of another
29 state body, provided that a majority of the members do
30 not discuss among themselves, other than as part of the



1 scheduled meeting, business of a specific nature that is
2 within the subject matter jurisdiction of the state body.

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

8 SEC. 3. Section 11123 of the Government Code is
9 amended to read:

10 11123. ~~(a)~~ All meetings of a state body shall be open
11 and public and all persons shall be permitted to attend
12 any meeting of a state body except as otherwise provided
13 in this article.

14 ~~(b) (1) Nothing in this article shall be construed to~~
15 ~~prohibit a state body from holding an open or closed~~
16 ~~meeting by teleconference if the convening at one~~
17 ~~location of a quorum of the state body is difficult or~~
18 ~~impossible, subject to all of the following:~~

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

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

26 ~~(C) Each teleconference location shall be identified in~~
27 ~~the notice of the meeting and shall be accessible to the~~
28 ~~public.~~

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

31 ~~(E) The portion of the teleconferenced meeting that~~
32 ~~is closed to the public may not include the consideration~~
33 ~~of any agenda item being heard pursuant to Section~~
34 ~~11125.5 of the Government Code.~~

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

38 ~~(2) For the purposes of this subdivision,~~
39 ~~“teleconference” means a conference of individuals in~~



1 ~~different locations, connected by electronic means,~~
2 ~~through either audio or video, or both.~~

3 ~~(3) This subdivision shall not be operative and shall~~
4 ~~have no effect on and after January 1, 1998.~~

5 SEC. 4. Section 11123.2 is added to the Government
6 Code, to read:

7 11123.2. (a) (1) Notwithstanding any other
8 provision of law, a state body may use teleconferencing
9 for the benefit of the public or the state body in
10 connection with any meeting or proceeding authorized
11 by law. The teleconference meeting or proceeding shall
12 comply with all requirements of this article and all other
13 provisions of law applicable to other meetings or
14 proceedings.

15 (2) The use of teleconferencing, as authorized by this
16 section, shall be limited to the receipt of public comment
17 or testimony by the state body and to the deliberations of
18 the state body. All votes taken during a teleconferenced
19 meeting shall be by rollcall.

20 (3) Each teleconference location shall be identified in
21 the notice and agenda of the meeting or proceeding and
22 shall be accessible to the public. The portion of any
23 teleconference meeting that is closed to the public may
24 not include the consideration of any agenda item being
25 heard pursuant to Section 11125.4 or 11125.5.

26 (4) If a state body elects to use teleconferencing, it
27 shall post the notice and agenda of the meeting or
28 proceeding at all teleconference locations and adopt
29 reasonable regulations to adequately protect the
30 statutory or constitutional rights of the parties or the
31 public appearing before the state body. The portions of
32 the teleconference meeting or proceeding that are
33 required to be open to the public shall be audible to the
34 public at each teleconference location.

35 (5) The term “teleconferencing” means a system
36 which provides for audio, or both audio and visual,
37 participation between all members of the state body and
38 the public attending a meeting or hearing at any
39 teleconference location.



1 (b) This section shall remain in effect only until
2 January 1, 2001, and as of that date is repealed, unless a
3 later enacted statute, enacted before January 1, 2001,
4 deletes or extends that date.

5 SEC. 5. Section 11124.1 of the Government Code is
6 amended to read:

7 11124.1. (a) Any person attending an open and
8 public meeting of the state body shall have the right to
9 record the proceedings ~~on a~~ *with an audio or video tape*
10 *recorder or a still or motion picture camera* in the absence
11 of a reasonable finding ~~of~~ *by the state body that such the*
12 *recording cannot continue without noise, illumination, or*
13 *obstruction of view that constitutes, or would constitute,*
14 *a persistent disruption of the proceedings.*

15 (b) *Any tape or film record of an open and public*
16 *meeting made for whatever purpose by or at the*
17 *direction of the state body shall be subject to inspection*
18 *pursuant to the California Public Records Act (Chapter*
19 *3.5 (commencing with Section 6250) of Division 7 of Title*
20 *1), but may be erased or destroyed 30 days after the*
21 *taping or recording. Any inspection of a video or tape*
22 *recording shall be provided without charge on a video or*
23 *tape player made available by the state body.*

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

30 SEC. 6. Section 11125 of the Government Code is
31 amended to read:

32 11125. (a) The state body shall provide notice of its
33 meeting to any person who requests such notice in
34 writing. Notice shall be given at least 10 days in advance
35 of the meeting, and shall include the name, address, and
36 telephone number of any person who can provide further
37 information prior to the meeting, but need not include a
38 list of witnesses expected to appear at the meeting. ~~The~~
39 ~~notice requirement shall not preclude the acceptance of~~
40 ~~testimony at meetings, other than emergency meetings,~~



1 ~~from members of the public, provided, however, that no~~
2 ~~action is taken by the state body at the same meeting on~~
3 ~~matters brought before the body by members of the~~
4 ~~public.~~

5 (b) The notice of a meeting of a body ~~which~~ *that* is a
6 state body as defined in Section 11121, 11121.2, 11121.5, or
7 11121.7, shall include a specific agenda for the meeting,
8 which shall include the items of business to be transacted
9 or discussed, ~~and no~~ *in closed session. A brief general*
10 *description of an item generally need not exceed 20*
11 *words. A description of an item to be transacted or*
12 *discussed in closed session shall include a citation of the*
13 *specific statutory authority under which a closed session*
14 *is being held. No item shall be added to the agenda*
15 *subsequent to the provision of this notice.*

16 (c) The notice of a meeting of an advisory body, ~~which~~
17 *that* is a state body as defined in Section 11121.8; shall
18 include a brief, general description of the business to be
19 transacted or discussed, and no item shall be added
20 subsequent to the provision of the notice.

21 (d) Notice of a meeting of a state body ~~which~~ *that*
22 complies with this section shall also constitute notice of a
23 meeting of an advisory body of that state body, provided
24 that the business to be discussed by the advisory body is
25 covered by the notice of the meeting of the state body,
26 provided that the specific time and place of the advisory
27 body's meeting is announced during the open and public
28 state body's meeting, and provided that the advisory
29 body's meeting is conducted within a reasonable time of,
30 and nearby, the meeting of the state body.

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

38 (f) A request for notice of more than one meeting of
39 a state body shall be subject to the provisions of Section
40 14911.



1 SEC. 7. Section 11125.1 of the Government Code is
2 amended to read:

3 11125.1. (a) Notwithstanding Section 6255 or any
4 other provisions of law, agendas of public meetings and
5 other writings, when distributed to all, or a majority of all,
6 of the members of a state body by ~~a member, officer,
7 employee, or agent of such body for any person in
8 connection with a matter subject to discussion or
9 consideration at a public meeting of such the body, are
10 disclosable~~ public records under the California Public
11 Records Act (Chapter 3.5 (commencing with Section
12 6250) of Division 7 of Title 1) ~~as soon as distributed,~~ and
13 shall be made available ~~pursuant to Sections 6253 and 6256~~
14 *upon request without delay*. However, this section shall
15 not include any writing exempt from public disclosure
16 under Section 6253.5, 6254, or 6254.7, *or Section 489.1 or*
17 *583 of the Public Utilities Code*.

18 (b) Writings ~~which that~~ are public records under
19 subdivision (a) and ~~which that~~ are distributed ~~prior to~~
20 ~~commencement of~~ *during* a public meeting shall be made
21 available for public inspection ~~upon request prior to~~
22 ~~commencement of such meeting at the meeting if~~
23 *prepared by the state body or a member of the state body,*
24 *or after the meeting if prepared by some other person*.

25 (c) ~~Writings which are public records under~~
26 ~~subdivision (a) and which are distributed during a public~~
27 ~~meeting and prior to commencement of their discussion~~
28 ~~at such meeting shall be made available for public~~
29 ~~inspection prior to commencement of, and during, their~~
30 ~~discussion at such meeting.~~

31 (d) ~~Writings which are public records under~~
32 ~~subdivision (a) and which are distributed during their~~
33 ~~discussion at a public meeting shall be made available for~~
34 ~~public inspection immediately or as soon thereafter as is~~
35 ~~practicable.~~

36 (e) ~~Nothing in this section shall be construed to~~
37 ~~prevent a state body from charging a fee or deposit for a~~
38 ~~copy of a public record pursuant to Section 6257. The~~
39 ~~writings described in subdivisions subdivision (b), (e),~~
40 ~~and (d) are subject to the requirements of the California~~



1 Public Records Act (Chapter 3.5 (commencing with
2 Section 6250) of Division 7 of Title 1), and shall not be
3 construed to ~~exempt from public inspection limit or delay~~
4 *the public's right to inspect* any record required to be
5 disclosed by that act, or to limit the public's right to
6 inspect any record covered by that act. This section shall
7 not be construed to be applicable to any writings solely
8 because they are properly discussed in a closed session of
9 a state body. Nothing in this article shall be construed to
10 require a state body to place any paid advertisement or
11 any other paid notice in any publication.

12 (f)

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

15 SEC. 8. Section 11125.2 of the Government Code is
16 amended to read:

17 11125.2. ~~Any~~ (a) *The state body shall publicly report*
18 ~~publicly at a subsequent public meeting, orally or in~~
19 ~~writing, any action taken, and any rollcall vote thereon,~~
20 ~~to appoint, employ, or dismiss a public employee arising~~
21 ~~out of any in closed session of the state body. and, except~~
22 ~~as provided in paragraph (6) of this subdivision, the vote~~
23 ~~or abstention of every member present thereon as~~
24 ~~follows:~~

25 (1) *Approval of an agreement concluding real estate*
26 *negotiations pursuant to Section 11126 shall be reported*
27 *after the agreement is final, as specified below:*

28 (A) *If its own approval renders the agreement final,*
29 *the state body shall report that approval and the*
30 *substance of the agreement in open session at the public*
31 *meeting during which the closed session is held.*

32 (B) *If final approval rests with the other party to the*
33 *negotiations, the state body shall disclose the fact of that*
34 *approval and the substance of the agreement upon*
35 *inquiry by any person, as soon as the other party or its*
36 *agent has informed the state body of its approval.*

37 (2) *Approval given to its legal counsel to defend, or*
38 *seek or refrain from seeking appellate review or relief, or*
39 *to enter as an amicus curiae in any form of litigation as the*
40 *result of a consultation under Section 11126 shall be*



1 reported in open session at the public meeting during
2 which the closed session is held. The report shall identify,
3 if known, the adverse party or parties and the substance
4 of the litigation. In the case of approval given to initiate
5 or intervene in an action, if the state body makes a
6 reasonable finding in the closed session that an
7 immediate report would adversely affect the state body's
8 position by (A) jeopardizing the state body's ability to
9 effectuate service of process on one or more named,
10 unserved, adverse parties, or (B) allowing a named,
11 adverse party to move assets, the state body may delay the
12 report until the beginning of the first open and public
13 session when the report would no longer result in the
14 adverse effects described in subparagraph (A) or (B), of
15 this paragraph, or until the beginning of the first open and
16 public session after service of process is made on all
17 named, adverse parties, whichever occurs first. In
18 addition to the report required during a meeting, if a
19 point has been reached at which a report during a
20 meeting would be required by this paragraph, the state
21 body shall immediately provide the documentation as
22 described in subdivisions (b) and (c) of this section and,
23 upon inquiry by any person, shall disclose the approval
24 given to initiate or intervene in the action, the substance
25 of the action, and the vote or abstention of every member
26 present thereon.

27 (3) Approval given to its legal counsel of a settlement
28 of pending litigation, as defined in Section 11126, at any
29 stage prior to or during a judicial or quasi-judicial
30 proceeding shall be reported after the settlement is final,
31 as specified below:

32 (A) If the state body accepts a settlement offer signed
33 by the opposing party, the body shall report its
34 acceptance and the substance of the agreement in open
35 session at the public meeting during which the closed
36 session is held.

37 (B) If final approval rests with some other party to the
38 litigation or with the court, then as soon as the settlement
39 becomes final, and upon inquiry by any person, the state



1 *body shall disclose the fact of that approval and the*
2 *substance of the agreement.*

3 *(C) For settlements authorized pursuant to Section*
4 *19442 of the Revenue and Taxation Code, the filing of the*
5 *public record described in subdivision (c) of Section*
6 *19442 shall satisfy the public report requirement*
7 *provided by this subdivision.*

8 *(4) Action taken to appoint, employ, dismiss, accept*
9 *the resignation of, or otherwise affect the employment*
10 *status of a public employee in closed session pursuant to*
11 *Section 11126 shall be reported at the public meeting*
12 *during which the closed session is held. Any report*
13 *required by this paragraph shall identify the title of the*
14 *position. The general requirement of this paragraph*
15 *notwithstanding, the report of a dismissal or of the*
16 *nonrenewal of an employment contract shall be deferred*
17 *until the first public meeting following the exhaustion of*
18 *administrative remedies, if any.*

19 *(5) Approval of an agreement concluding labor*
20 *negotiations with represented employees pursuant to*
21 *Section 11126 shall be reported after the agreement is*
22 *final and has been accepted or ratified by the other party.*
23 *The report shall identify the item approved and the other*
24 *party or parties to the negotiation.*

25 *(6) In the case of action in a disciplinary case by a state*
26 *body that regulates or licenses a business or profession,*
27 *the state body may delay reporting of the action, and*
28 *providing the documentation described in subdivision*
29 *(b), until the beginning of the next regular meeting of the*
30 *state body after the subject of the disciplinary case is*
31 *notified of the action. If the state body makes a reasonable*
32 *finding that disclosure of the votes and abstentions of*
33 *individual members would expose them to a substantial*
34 *risk of physical violence, the report and the*
35 *documentation required by subdivision (b) may omit the*
36 *votes and abstentions of individual members. The state*
37 *body may make the finding in the closed session, and may*
38 *delay reporting the finding, and providing the*
39 *documentation described in subdivision (b), until the*
40 *meeting at which it reports the disciplinary action.*



1 (b) The state body shall provide to any person who has
2 submitted a written request to the state body within 24
3 hours of the posting of the agenda, or to any person who
4 has made a standing request for all documentation as part
5 of a request for notice of meetings pursuant to Section
6 11123, if the requester is present at the time the closed
7 session ends, copies of any contracts, settlement
8 agreements, or other documents that were finally
9 approved or adopted in the closed session. If the action
10 taken results in one or more substantive amendments to
11 the related documents requiring retyping, the
12 documents need not be released until the retyping is
13 completed during normal business hours, provided that
14 the presiding officer of the state body or his or her
15 designee orally summarizes the substance of the
16 amendments for the benefit of the document requester
17 or any other person present and requesting the
18 information.

19 (c) Except as provided in paragraphs (2) and (6) of
20 subdivision (a), the documentation referred to in
21 subdivision (b) shall be available to any person on the
22 next business day following the meeting in which the
23 action referred to is taken or, in the case of substantial
24 amendments, when any necessary retyping is complete.

25 (d) Nothing in this section shall be construed to
26 require that the state body approve actions not otherwise
27 subject to state body approval.

28 (e) No action for injury to a reputational, liberty, or
29 other personal interest may be commenced by or on
30 behalf of any person with respect to whom a disclosure is
31 made by a state body in an effort to comply with this
32 section.

33 SEC. 9. Section 11125.4 is added to the Government
34 Code, to read:

35 11125.4. (a) A special meeting may be called at any
36 time by the presiding officer of the state body or by a
37 majority of the members of the state body. A special
38 meeting may only be called for one of the following
39 purposes where compliance with the 10-day notice
40 provisions of Section 11125 would impose a substantial



1 hardship on the state body or where immediate action is
2 required to protect the public interest:

3 (1) To consider “pending litigation” as that term is
4 defined in subdivision (q) of Section 11126.

5 (2) To consider proposed legislation.

6 (3) To consider issuance of a legal opinion.

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

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

11 (6) To consider license examinations and applications.

12 (7) To consider an action on a loan or grant provided
13 pursuant to Division 31 (commencing with Section
14 50000) of the Health and Safety Code.

15 (b) When a special meeting is called pursuant to one
16 of the purposes specified in subdivision (a), the state body
17 shall provide notice of the special meeting to each
18 member of the state body and to all parties that have
19 requested notice of its meetings as soon as is practicable
20 after the decision to call a special meeting has been made,
21 but shall be delivered in a manner that allows it to be
22 received by the members and by newspapers of general
23 circulation and radio or television stations at least 48 hours
24 before the time of the special meeting specified in the
25 notice. Notice shall be made available to newspapers of
26 general circulation and radio or television stations by
27 providing that notice to all national press wire services.
28 Notice shall be provided to the general public by placing
29 it on appropriate electronic bulletin boards or other
30 appropriate mechanisms, whenever the state body has
31 the electronic capability necessary to do so. The notice
32 shall specify the time and place of the special meeting and
33 the business to be transacted. No other business shall be
34 considered at a special meeting by the state body. The
35 written notice may be dispensed with as to any member
36 who at or prior to the time the meeting convenes files
37 with the clerk or secretary of the state body a written
38 waiver of notice. The waiver may be given by telegram,
39 facsimile transmission, or similar means. The written
40 notice may also be dispensed with as to any member who



1 is actually present at the meeting at the time it convenes.
2 Notice shall be required pursuant to this section
3 regardless of whether any action is taken at the special
4 meeting.

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

17 SEC. 10. Section 11125.5 of the Government Code is
18 amended to read:

19 11125.5. (a) In the case of an emergency situation
20 involving matters upon which prompt action is necessary
21 due to the disruption or threatened disruption of public
22 facilities, a state body may hold an emergency meeting
23 without complying with the 10-day notice requirement of
24 Section 11125 *or the 48-hour notice requirement of*
25 *Section 11125.4.*

26 (b) For purposes of this section, “emergency
27 situation” means any of the following, as determined by
28 a majority of the members of the state body during a
29 meeting prior to the emergency meeting, or at the
30 beginning of the emergency meeting:

31 (1) Work stoppage or other activity ~~which~~ *that*
32 severely impairs public health or safety, or both.

33 (2) Crippling disaster ~~which~~ *that* severely impairs
34 public health or safety, or both.

35 ~~(3) Difficulties with examinations for licensure which~~
36 ~~require immediate attention.~~

37 ~~(4) Administrative disciplinary matters, including, but~~
38 ~~not limited to, consideration of proposed decisions and~~
39 ~~stipulations, and pending litigation, which require~~
40 ~~immediate attention.~~



1 ~~(5) Consideration of applications for licensure where~~
2 ~~a decision must be made in less than 10 days.~~

3 ~~(6) Consideration by a licensing agency of proposed~~
4 ~~legislation which requires immediate attention due to~~
5 ~~legislative action which may be taken prior to the next~~
6 ~~regularly scheduled meeting of the agency, or due to time~~
7 ~~limitations imposed by law.~~

8 ~~(7) Action on a loan or grant provided pursuant to~~
9 ~~Division 31 (commencing with Section 50000) of the~~
10 ~~Health and Safety Code if a 10-day delay would~~
11 ~~detrimentally affect the ability to provide or operate low-~~
12 ~~or moderate-income housing or seriously affect the fiscal~~
13 ~~integrity of the program pursuant to which the loan or~~
14 ~~grant was made or the assisted housing development.~~

15 ~~(8) Action on a loan provided pursuant to subdivision~~
16 ~~(d) of Section 8670.53.3 if the administrator for oil spill~~
17 ~~response appointed by the Governor pursuant to Section~~
18 ~~8670.4 determines that a 10-day delay would~~
19 ~~detrimentally affect the ability to make the payments~~
20 ~~specified by subdivision (b) of Section 8670.49.~~

21 (c) However, newspapers of general circulation and
22 radio or television stations ~~which~~ *that* have requested
23 notice of meetings pursuant to Section 11125 shall be
24 notified by the presiding officer of the state body, or a
25 designee thereof, one hour prior to the emergency
26 meeting by telephone. If telephone services are not
27 functioning, the notice requirements of this section shall
28 be deemed waived, and the presiding officer of the state
29 body, or a designee thereof, shall notify those newspapers,
30 radio stations, or television stations of the fact of the
31 holding of the emergency meeting, the purpose of the
32 meeting, and any action taken at the meeting as soon
33 after the meeting as possible.

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



1 SEC. 11. Section 11125.7 of the Government Code, as
2 amended by Chapter 938 of the Statutes of 1995, is
3 amended to read:

4 11125.7. (a) Except as otherwise provided in this
5 section, the state body shall provide an opportunity for
6 members of the public to directly address the state body
7 on each agenda item before or during the state body's
8 discussion or consideration of the item. This section is not
9 applicable if the agenda item has already been considered
10 by a committee composed exclusively of members of the
11 state body at a public meeting where interested members
12 of the public were afforded the opportunity to address the
13 committee on the item, before or during the committee's
14 consideration of the item, unless the item has been
15 substantially changed since the committee heard the
16 item, as determined by the state body. *Every notice for*
17 *a special meeting at which action is proposed to be taken*
18 *on an item shall provide an opportunity for members of*
19 *the public to directly address the state body concerning*
20 *that item prior to action on the item. In addition, the*
21 *notice requirement of Section 11125 shall not preclude*
22 *the acceptance of testimony at meetings, other than*
23 *emergency meetings, from members of the public,*
24 *provided, however, that no action is taken by the state*
25 *body at the same meeting on matters brought before the*
26 *body by members of the public.*

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

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

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

39 ~~(d)~~



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

6 ~~(e)~~

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

10 ~~(f)~~

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

22 SEC. 12. Section 11126 of the Government Code is
23 amended to read:

24 11126. (a) (1) Nothing in this article shall be
25 construed to prevent a state body from holding closed
26 sessions during a regular or special meeting to consider
27 the appointment, employment, or dismissal of a public
28 employee or to hear complaints or charges brought
29 against that employee by another person or employee
30 unless the employee requests a public hearing.

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



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

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

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

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

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

24 (2) Prevent an advisory body of a state body which
25 administers the licensing of persons engaged in
26 businesses or professions from conducting a closed session
27 to discuss matters which the advisory body has found
28 would constitute an unwarranted invasion of the privacy
29 of an individual licensee or applicant if discussed in an
30 open meeting, provided the advisory body does not
31 include a quorum of the members of the state body it
32 advises. Those matters may include review of an
33 applicant’s qualifications for licensure and an inquiry
34 specifically related to the state body’s enforcement
35 program concerning an individual licensee or applicant
36 where the inquiry occurs prior to the filing of a civil,
37 criminal, or administrative disciplinary action against the
38 licensee or applicant by the state body.

39 (3) Prohibit a state body from holding a closed session
40 to deliberate on a decision to be reached in a proceeding



1 required to be conducted pursuant to Chapter 5
2 (commencing with Section 11500) of Part 1 of Division 3
3 of Title 2 or similar provisions of law.

4 ~~(4) Prevent any state body from holding a closed~~
5 ~~session to consider matters affecting the national security.~~

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

15 ~~(6)~~

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

20 ~~(7)~~

21 (6) Prevent the Alcoholic Beverage Control Appeals
22 Board from holding a closed session for the purpose of
23 holding a deliberative conference as provided in Section
24 11125.

25 ~~(8)~~

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

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

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

39 (D) For purposes of this paragraph, “lease” includes
40 renewal or renegotiation of a lease.



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

5 ~~(9)~~

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

11 ~~(10)~~

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

17 ~~(11)~~

18 (10) Prevent the Franchise Tax Board from holding
19 closed sessions for the purpose of discussion of
20 confidential tax returns or ~~data~~ information the public
21 disclosure of which is prohibited by law, or from
22 considering matters pertaining to the appointment or
23 removal of the Executive Officer of the Franchise Tax
24 Board.

25 (11) *Require the Franchise Tax Board to disclose any*
26 *confidential tax information considered in closed sessions,*
27 *the public disclosure of which is prohibited pursuant to*
28 *Article 2 (commencing with Section 19542) of Chapter 7*
29 *of Part 10.2 of the Revenue and Taxation Code.*

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

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

36 (14) Prevent the State Board of Education, or any
37 committee advising the State Board of Education, from
38 holding closed sessions on those portions of its review of
39 assessment instruments pursuant to Chapter 5
40 (commencing with Section 60600) of Part 33 of the



1 Education Code during which actual test content is
2 reviewed and discussed. The purpose of this provision is
3 to maintain the confidentiality of the assessments under
4 review.

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

12 (16) Prevent a state body that invests retirement,
13 pension, or endowment funds from holding closed
14 sessions when considering investment decisions. For
15 purposes of consideration of shareholder voting on
16 corporate stocks held by the state body, closed sessions for
17 the purposes of voting may be held only with respect to
18 election of corporate directors, election of independent
19 auditors, and other financial issues that could have a
20 material effect on the net income of the corporation. For
21 the purpose of real property investment decisions that
22 may be considered in a closed session pursuant to this
23 paragraph, a state body shall also be exempt from the
24 provisions of paragraph 8 relating to the identification of
25 real properties prior to the closed session.

26 (17) Prevent a state body, or boards, commissions,
27 administrative officers, or other representatives that may
28 properly be designated by law or by a state body, from
29 holding closed sessions with its representatives in
30 discharging its responsibilities under Chapter 10
31 (commencing with Section 3500) of Division 4 of Title 1
32 as the sessions relate to salaries, salary schedules, or
33 compensation paid in the form of fringe benefits. For the
34 purposes enumerated in the preceding sentence, a state
35 body may also meet with a state conciliator who has
36 intervened in the proceedings.

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



1 (2) Nothing in this article shall be construed to
2 prevent the Public Utilities Commission from holding
3 closed sessions to deliberate on the institution of
4 proceedings, or disciplinary actions against regulated
5 utilities.

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

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

21 ~~(3)~~

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

26 ~~(4) (A)~~

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

31 ~~(B)~~

32 (ii) Based on existing facts and circumstances, the
33 state body is meeting only to decide whether a closed
34 session is authorized pursuant to ~~subparagraph (A)~~
35 *clause (i)*.

36 ~~(5) (A)~~

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

40 ~~(B)~~



1 (ii) The legal counsel of the state body shall prepare
2 and submit to it a memorandum stating the specific
3 reasons and legal authority for the closed session. If the
4 closed session is pursuant to paragraph (1), the
5 memorandum shall include the title of the litigation. If
6 the closed session is pursuant to ~~paragraph (2) or (3)~~
7 *subparagraph (A) or (B)*, the memorandum shall include
8 the existing facts and circumstances on which it is based.
9 The legal counsel shall submit the memorandum to the
10 state body prior to the closed session, if feasible, and in any
11 case no later than one week after the closed session. The
12 memorandum shall be exempt from disclosure pursuant
13 to Section 6254.25.

14 ~~(C)~~

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

19 ~~(D)~~

20 (iv) Disclosure of a memorandum required under this
21 subdivision shall not be deemed as a waiver of the
22 lawyer-client privilege, as provided for under Article 3
23 (commencing with Section 950) of Chapter 4 of Division
24 8 of the Evidence Code.

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

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

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



1 (3) Prevent an administrative committee established
2 by the State Board of Accountancy pursuant to Section
3 5020 or 5020.3 of the Business and Professions Code from
4 conducting a closed session to consider disciplinary action
5 against an individual accountant prior to the filing of an
6 accusation against the accountant pursuant to Section
7 11503. Nothing in this article shall be construed to prevent
8 an examining committee established by the Board of
9 Accountancy pursuant to Section 5023 of the Business and
10 Professions Code from conducting a closed hearing to
11 interview an individual applicant or accountant
12 regarding the applicant's qualifications.

13 (4) Prevent a state body, as defined in Section 11121.2,
14 from conducting a closed session to consider any matter
15 that properly could be considered in closed session by the
16 state body whose authority it exercises.

17 (5) Prevent a state body, as defined in Section 11121.7,
18 from conducting a closed session to consider any matter
19 that properly could be considered in a closed session by
20 the body defined as a state body pursuant to Section
21 11121, 11121.2, or 11121.5.

22 (6) Prevent a state body, as defined in Section 11121.8,
23 from conducting a closed session to consider any matter
24 that properly could be considered in a closed session by
25 the state body it advises.

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

28 (A) When considering matters pertaining to the
29 appointment or removal of the executive secretary of the
30 State Board of Equalization.

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

34 (8) *Require the State Board of Equalization to disclose*
35 *any action taken in closed session or documents executed*
36 *in connection with that action, the public disclosure of*
37 *which is prohibited by law pursuant to Sections 15619 and*
38 *15641 of this code and Sections 833, 7056, 8255, 9255, 11655,*
39 *30455, 32455, 38705, 38706, 43651, 45982, 46751, 50159,*
40 *55381, and 60609 of the Revenue and Taxation Code.*



1 (9) Prevent the California Earthquake Prediction
2 Evaluation Council, or other body appointed to advise the
3 Director of the Office of Emergency Services or the
4 Governor pursuant to Section 8590 concerning matters
5 relating to volcanic or earthquake predictions, from
6 holding closed sessions when considering the evaluation
7 of possible predictions.

8 (g) This article shall not prevent either of the
9 following:

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

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

23 SEC. 13. Section 11126.3 of the Government Code is
24 amended to read:

25 11126.3. (a) Prior to holding any closed session, the
26 state body shall ~~state~~ *disclose, in an open meeting, the*
27 ~~general reason or reasons for nature of the item or items~~
28 ~~to be discussed in the closed session, and cite the specific~~
29 ~~statutory authority, including the particular section,~~
30 ~~subdivision, and paragraph under which the session is~~
31 ~~being held.~~ *The disclosure may take the form of a*
32 *reference to the item or items as they are listed by*
33 *number or letter on the agenda.* If the session is closed
34 pursuant to *subparagraph (A) of paragraph (1) (2) of*
35 ~~subdivision (e)~~ *(e)* of Section 11126, the state body shall
36 state the title of, or otherwise specifically identify, the
37 litigation to be discussed unless the body states that to do
38 so would jeopardize the body's ability to effectuate
39 service of process upon one or more unserved parties, or



1 that to do so would jeopardize its ability to conclude
2 existing settlement negotiations to its advantage.

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

5 (c) The ~~statement~~ *disclosure* shall be made as part of
6 the notice provided for the meeting pursuant to Section
7 11125 or pursuant to subdivision (a) of Section 92032 of
8 the Education Code and of any order or notice required
9 by Section 11129.

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

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

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

37 (g) *The announcements required to be made in open*
38 *session pursuant to this section may be made at the*
39 *location announced in the agenda for the closed session,*



1 *as long as the public is allowed to be present at that*
2 *location for the purpose of hearing the announcement.*

3 SEC. 14. Section 11130 of the Government Code is
4 amended to read:

5 11130. ~~Any~~—(a) *The Attorney General, the district*
6 *attorney, or any interested person may commence an*
7 *action by mandamus, injunction, or declaratory relief for*
8 *the purpose of stopping or preventing violations or*
9 *threatened violations of this article or to determine the*
10 *applicability of this article to actions or threatened future*
11 *action by members of the state body or to determine*
12 *whether any rule or action by the state body to penalize*
13 *or otherwise discourage the expression of one or more of*
14 *its members is valid or invalid under the laws of this state*
15 *or of the United States, or to compel the state body to tape*
16 *record its closed sessions as hereinafter provided.*

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

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

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

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



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

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

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

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

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

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

25 SEC. 15. Section 11130.3 of the Government Code is
26 amended to read:

27 11130.3. (a) ~~Any~~ The Attorney General, the district
28 attorney, or any interested person may commence an
29 action by mandamus, injunction, or declaratory relief for
30 the purpose of obtaining a judicial determination that an
31 action taken by a state body in violation of Section 11123
32 or 11125 is null and void under this section. ~~Any action~~
33 ~~seeking such a judicial determination shall be~~
34 ~~commenced within 30 days from the date the action was~~
35 ~~taken.~~ Nothing in this section shall be construed to
36 prevent a state body from curing or correcting an action
37 challenged pursuant to this section.

38 (b) Prior to any action being commenced pursuant to
39 subdivision (a), the Attorney General, the district
40 attorney, or the interested person shall make a demand



1 of the state body to cure or correct the action alleged to
2 have been taken in violation of Section 11123. The
3 demand shall be in writing and clearly describe the
4 challenged action of the state body and nature of the
5 alleged violation.

6 (c) (1) The written demand shall be made within 90
7 days from the date the action was taken unless the action
8 was taken in an open session but in violation of Section
9 11125, in which case the written demand shall be made
10 within 30 days from the date the action was taken.

11 (2) Within 30 days of receipt of the demand, the state
12 body shall cure or correct the challenged action and
13 inform the demanding party in writing of its actions to
14 cure or correct or inform the demanding party in writing
15 of its decision not to cure or correct the challenged action.

16 (3) If the state body takes no action within the 30-day
17 period, the inaction shall be deemed a decision not to cure
18 or correct the challenged action, and the 15-day period to
19 commence the action described in subdivision (a) shall
20 commence to run the day after the 30-day period to cure
21 or correct expires.

22 (4) Within 15 days of receipt of the written notice of
23 the state body's decision to cure or correct, or not to cure
24 or correct, or within 15 days of the expiration of the 30-day
25 period to cure or correct, whichever is earlier, the
26 demanding party shall be required to commence the
27 action pursuant to subdivision (a) or thereafter be barred
28 from commencing the action.

29 (d) An action that is alleged to have been taken in
30 violation of Section 11123, 11125, 11125.3, or 11125.5 shall
31 not be determined to be null and void if any of the
32 following conditions exist:

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

37 (2) The action taken gave rise to a contractual
38 obligation, including a contract let by competitive bid
39 other than compensation for services in the form of salary
40 or fees for professional services, upon which a party has,



1 in good faith *and without notice of a challenge to the*
2 *validity of the action*, detrimentally relied.

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

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

7 (5) *Any person, city, city and county, county, district,*
8 *or any agency or subdivision of the state alleging*
9 *noncompliance with Section 11125, 11125.3, or 11125.5,*
10 *because of any defect, error, irregularity, or omission in*
11 *the notice given pursuant to those provisions, had actual*
12 *notice of the item of business at least 10 days prior to the*
13 *meeting at which the action was taken, if the meeting was*
14 *noticed pursuant to Section 11125, or prior to the meeting*
15 *at which the action was taken if the meeting was noticed*
16 *pursuant to Section 11125.3 or 11125.5.*

17 (e) *During any action seeking a judicial determination*
18 *pursuant to subdivision (a), if the court determines*
19 *pursuant to a showing by the state body that an action*
20 *alleged to have been taken in violation of Section 11123,*
21 *11125, 11125.3, or 11125.5 has been cured or corrected by*
22 *a subsequent action of the state body, the action filed*
23 *pursuant to subdivision (a) shall be dismissed with*
24 *prejudice.*

25 (f) *The fact that a state body takes a subsequent action*
26 *to cure or correct an action taken pursuant to this section*
27 *shall not be construed or admissible as evidence of a*
28 *violation of this article.*

29 SEC. 16. Section 11130.7 of the Government Code is
30 amended to read:

31 11130.7. Each member of a state body who attends a
32 meeting of ~~such~~ *that* body in violation of any provision of
33 this article, ~~with knowledge of the fact that the meeting~~
34 ~~is in violation thereof~~ *and where the member intends to*
35 *deprive the public of information to which the member*
36 *knows or has reason to know the public is entitled under*
37 *this article*, is guilty of a misdemeanor.

38 SEC. 17. Section 11131 of the Government Code is
39 amended to read:



1 11131. (a) No state agency shall conduct any
2 meeting, conference, or other function in any facility that
3 prohibits the admittance of any person, or persons, on the
4 basis of race, religious creed, color, national origin,
5 ancestry, or sex, *or that is inaccessible to disabled persons,*
6 *or where members of the public may not be present*
7 *without making a payment or purchase.* As used in this
8 section, “state agency” means and includes every state
9 body, office, officer, department, division, bureau, board,
10 council, commission, or other state agency.

11 (b) *No notice, agenda, announcement, or report*
12 *required under this article need identify any victim or*
13 *alleged victim or tortious sexual conduct or child abuse*
14 *unless the identity of the person has been publicly*
15 *disclosed.*

16 SEC. 18. No reimbursement is required by this act
17 pursuant to Section 6 of Article XIII B of the California
18 Constitution because the only costs that may be incurred
19 by a local agency or school district will be incurred
20 because this act creates a new crime or infraction,
21 eliminates a crime or infraction, or changes the penalty
22 for a crime or infraction, within the meaning of Section
23 17556 of the Government Code, or changes the definition
24 of a crime within the meaning of Section 6 of Article
25 XIII B of the California Constitution.

26 Notwithstanding Section 17580 of the Government
27 Code, unless otherwise specified, the provisions of this act
28 shall become operative on the same date that the act
29 takes effect pursuant to the California Constitution.

