

Assembly Bill No. 1234

CHAPTER 393

An act to amend Sections 11125, 11125.4, 11125.5, 11130, and 11130.3 of the Government Code, relating to open meetings.

[Approved by Governor September 15, 1999. Filed
with Secretary of State September 15, 1999.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1234, Shelley. State bodies: open meetings: notice: violations.

(1) The Bagley-Keene Open Meeting Act requires, among other things, that notice of regular meetings of a state body be given to any person who requests that notice in writing.

This bill would require notice of a regular meeting of a state body also to be made available on the Internet, and would require the written notice to include the address of the Internet site where required notices are made available.

(2) Under the act, notice for special meetings of a state body is required to be provided to persons requesting that notice, and to be provided to the general public by placing it on appropriate electronic bulletin boards or other appropriate mechanisms, whenever the state body has the electronic capability necessary to do so. A state body holding a special meeting is required to make a specified finding in regard to the need for the special meeting.

This bill would delete the provisions regarding the placing of notice of a special meeting on electronic bulletin boards, and instead would require notice of the special meeting, and the finding in regard to the need for the special meeting, to be made available on the Internet. It would require the written notice to specify the address of the Internet site where required notices are made available.

(3) In the case of an emergency meeting by a state body, the act requires the presiding officer of the state body, or a designee thereof, to provide notice of the emergency meeting by telephone, if telephone services are functioning, to newspapers of general circulation and radio or television stations that have requested notice of meetings, one hour prior to the emergency meeting. The minutes of an emergency meeting and other specified information are required to be posted for a minimum of 10 days in a public place as soon after the meeting as possible.

This bill would also require notice of the emergency meeting to be made available on the Internet as soon as is practicable after the decision to call the emergency meeting has been made, and would require the minutes of the meeting to be made available on the Internet for a minimum of 10 days.

(4) This bill would provide that the provisions described in (1) to (3), inclusive, shall not be implemented until July 1, 2001, unless otherwise authorized by the Department of Information Technology pursuant to a specified executive order.

(5) The act authorizes the Attorney General, the district attorney, or any interested party to commence an action by mandamus, injunction, or declaratory relief 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 instead would authorize these actions for the purpose of stopping or preventing violations or threatened violations of the act, or determining the applicability of the act to past actions or threatened future actions by members of a state body.

The act also authorizes any interested person to commence such an action for the purpose of obtaining a judicial determination that an action taken by a state body in violation of certain provisions of the act is null and void. An action seeking such a judicial determination is required to be filed within 30 days of the date the action was taken.

This bill would change that filing period to 90 days.

This bill would declare the intent of the Legislature in making these changes to the act to supersede the decision of the California Supreme Court in *Regents of the University of California v. Superior Court (Molloy)* (1999) 20 Cal.4th 509.

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

SECTION 1. Section 11125 of the Government Code is amended to read:

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 as defined in Section 11121, 11121.2, 11121.5, or 11121.7 shall include a specific agenda for the meeting, which shall include the items of business to be transacted or discussed in 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.



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

(d) 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.

(e) 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.

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

SEC. 2. Section 11125.4 of the Government Code is amended to read:

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.

SEC. 3. Section 11125.5 of the Government Code is amended to read:

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.

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

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.

SEC. 5. Section 11130.3 of the Government Code is amended to read:

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.

SEC. 6. It is the intent of the Legislature, in amending Sections 11130 and 11130.3 of the Government Code, to supersede the decision of the California Supreme Court in *Regents of the University of California v. Superior Court (Molloy)* (1999) 20 Cal.4th 509, in which



the Court held that the only remedy under the Bagley-Keene Act for an action taken in violation of that act is to bring a lawsuit to nullify the action within 30 days.

SEC. 7. The amendments to Sections 11125, 11125.4, and 11125.5 of the Government Code made by this act shall not be implemented until July 1, 2001, unless otherwise authorized by the Department of Information Technology pursuant to Executive Order D-3-99.

