

## ITEM 6

### LEGISLATIVE UPDATE

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**Trailer Bill:** Bagley-Keene Open Meeting Act: Remote Participation in Meetings

Trailer Bill language posted on the Department of Finance’s website,<sup>1</sup> as updated May 14, 2021, specifies that a “meeting” under the Bagley-Keene Open Meeting Act (act), includes a meeting held by teleconference. The bill would require all meetings to be held by teleconference, authorize but not require state agencies to also provide an in-person venue, and would remove the provisions of the act that require each teleconference location to be identified in the notice and agenda and accessible to the public. The bill would instead require the state body to provide a means by which the public may remotely hear or observe the meeting, as specified, and would require information to be provided in any notice to the public indicating how the public can access the meeting remotely.

The bill would require the state body to provide an opportunity for members of the public to address the state body. The bill would specify that no member of the state body would be required to be physically present at any physical meeting location designated in the agenda of the meeting. It would also require the agency to post the agenda 10-days in advance of the meeting, or as provided in accordance with the provisions applicable to a special or emergency meeting, as well as posted on the state body’s internet website and at any physical meeting location designated in the agenda.

The bill would also provide that the notice of the meeting is required to specify the means by which a meeting may be accessed by teleconference. The bill would prohibit the agenda from disclosing any information regarding any remote location from which a member is participating.

The bill would further require that if a state body discovers that a means of remote access required by these provisions has failed for the majority of participants during a meeting, the state body would be required to end or adjourn the meeting and take specified actions to notify participants and communicate when the state body intends to reconvene the meeting and how a member of the public may hear audio of, or observe, the meeting.

Existing law prohibits a state body from requiring, as a condition to attend a meeting, a person to register the person’s name, or to provide other information, or to fulfill any condition precedent to the person’s attendance. This bill would exclude from that prohibition an internet website or other online platform that may require identification to log into a teleconference.

Existing constitutional provisions require that a statute that limits the right of access to the meetings of public bodies or the writings of public officials and agencies be adopted with findings demonstrating the interest protected by the limitation and the need for protecting that interest. This bill would make legislative findings to that effect.

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<sup>1</sup> See Corrections and General Government, Bagley-Keene Open Meeting Act: Remote Participation in Meetings, <https://esd.dof.ca.gov/dofpublic/trailerBill.html> (accessed on August 30, 2021).

If this language is included the trailer bill and is enacted, it would take effect immediately, not later than October 10, 2021 which is the last day for the Governor to sign or veto bills.

### **AB 1013 State mandates: claims**

AB 1013 was introduced by Assembly Member Lackey on February 18, 2021.

The California Constitution requires, whenever the Legislature or a state agency mandates a new program or higher level of service on any local government, including school districts, the state to provide a subvention of funds to reimburse the local government, unless an exception applies. Statutory provisions that establish procedures for making that reimbursement include a requirement that no claim shall be made or paid unless it exceeds \$1,000. This bill would amend Government Code section 17564 to lower the minimum claim amount to \$900.

On March 4, 2021, the bill was referred to the Assembly Committee on Local Government.

This bill contains the same language as the member's 2020 spot bill, AB 2395 State mandates: claims, which staff tracked last year.

This bill has not had a hearing and has not made it out of its house of origin before the deadline to do so for this year. Therefore, it may become a two-year bill if it clears the Assembly by January 31, 2022.

### **AB 1291 State Bodies: open meetings**

AB 1291 was introduced by Assembly Member Frazier on February 19, 2021. On March 4, 2021 the bill was referred to the Assembly Committee on Governmental Organization. On April 12, 2021, the bill was re-referred to the Assembly Committee on Appropriations. On April 21, 2021 it was read a second time and on April 29, 2021 it was read a third time, passed, and was ordered to the Senate. On May 3, 2021, the bill was read and referred on May 12, 2021 to the Senate Committee on Governmental Organization. On June 8, 2021, the bill was passed and re-referred to the Committee on Appropriations. On June 21, 2021, the bill was ordered to a second reading and on June 22, 2021, was read a second time and on June 24, 2021, it was read a third time and ordered to the Assembly. On June 30, 2021, the bill was enrolled and presented to the Governor. On July 9, 2021, the bill was approved by the Governor and chaptered by the Secretary of State.

The Bagley-Keene Open Meeting Act requires that meetings of a state body be open and public and that all persons be permitted to attend, with certain exceptions. Existing law provides that, subject to certain exceptions and reasonable regulations, the state body shall provide members of the public an opportunity to directly address the state body on agenda items. Existing law authorizes the state body to limit the amount of time allotted for each member of the public to speak, but specifies that members of the public who use translators shall be given twice that allotted amount of time.

This bill would also require a state body, when it limits time for public comment, to provide at least twice the allotted time to a member of the public who utilizes translating technology to address the state body. The bill would additionally make technical, nonsubstantive changes.

### **AB 130 Education finance: education omnibus budget trailer bill**

On July 9, 2021, AB 130 (Ting) was chaptered. After it was last amended, it was summarized in the Assembly Floor Analysis dated July 7, 2021, as follows:

This is the TK-12 Public Education Omnibus Budget Trailer bill, which in coordination with SB 129 (Skinner, 2021), appropriates Proposition 98 funding at

\$79.329 Billion, for the 2019-20 Budget Year, \$93.429 Billion for the 2020-21 Budget Year, and \$93.728 Billion in ongoing Proposition 98 funding for the 2021-22 Budget Year, and all conforming statutory changes. The bill authorizes Universal Transitional Kindergarten, Expanded Learning programs, Special Education Preschool, and the Educator Effectiveness Block Grant, and expands many existing programs including the California Community Schools Partnership Program, and various educator pipeline programs. The bill amends Independent Study statute, and makes major changes to the Local Control Funding formula.<sup>2</sup>

Most of the changes made by this bill are technical in nature or are unrelated to the mandates process except for the following amendments which are relevant to Government Code sections 17561 and 17581.6.

In Section 109, Government Code section 7902.2(a)-(d) is added to the Government Code, to read: 7902.2(a) For the 2019-20 and 2020-21 fiscal years only, if the appropriations limit determined pursuant to Section 7902 of a school district, community college district, or county superintendent of schools, exceeds its proceeds of taxes, the appropriations limit shall be decreased to the proceeds of taxes for that school district, community college district, or county superintendent of schools. (b) The Superintendent of Public Instruction shall notify the governing board of affected school districts and county superintendents of schools of the amounts reduced pursuant to subdivision (a). The notification shall be at a time and in a manner determined by the Superintendent of Public Instruction. (c) The Chancellor of the California Community Colleges shall notify the governing board of affected community college districts of the amounts reduced pursuant to subdivision (a). The notification shall be made at a time and in a manner determined by the Chancellor of the California Community Colleges. (d) Any decrease in a local jurisdiction's appropriations limit pursuant to this section shall increase the appropriations limit of the state by an equal amount.

In Section 110, Government Code section 7906(f) for school districts, is amended to read: (f) Each school district shall report to the Superintendent of Public Instruction and to the Director of Finance at least annually its appropriations limit, its appropriations subject to limitation, the amount of its state aid apportionments and subventions included within the proceeds of taxes of the school district, amounts excluded from its appropriations limit, and any increase or decrease to its appropriations limit pursuant to Section 7902.1, at a time and in a manner prescribed by the Superintendent of Public Instruction and approved by the Director of Finance.

In Section 111, Government Code section 7907(h) for county superintendents of schools, is amended to read: (h) Each county superintendent of schools shall report to the Superintendent of Public Instruction and to the Director of Finance at least annually its appropriations limit, its appropriations subject to limitation, the amount of its state aid apportionments and subventions included within the proceeds of taxes of the county superintendents of schools, amounts excluded from its appropriations limit, and any increase or decrease to its appropriations limit pursuant to Section 7902.1, at a time and in a manner prescribed by the Superintendent of Public Instruction and approved by the Director of Finance.

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<sup>2</sup> Assembly Floor Analysis, July 7, 2021, Concurrence in Senate Amendments, AB 130 (Committee on Budget) as amended July 5, 2021, [https://leginfo.ca.gov/faces/billAnalysisClient.xhtml?bill\\_id=202120220AB130](https://leginfo.ca.gov/faces/billAnalysisClient.xhtml?bill_id=202120220AB130) (accessed September 1, 2021).

In Section 112, Government Code section 7908(c) for community college districts, is amended to read: (c) Each community college district shall report to the Chancellor of the California Community Colleges and to the Director of Finance at least annually its appropriations limit, its appropriations subject to limitation, the amount of its state aid apportionments and subventions included within the proceeds of taxes of the community college district, amounts excluded from the appropriations limit, and any increase or decrease to its appropriations limit pursuant to Section 7902.1, at a time and in a manner prescribed by the Chancellor of the California Community Colleges and approved by the Director of Finance.

In Section 114 to Government Code section 17581.6(f)(36) for the block grant is amended to include the following program: (36) *Public School Restrooms: Feminine Hygiene Products* (18-TC-01; Chapter 687 of the Statutes of 2017).

### **AB 361 Open meetings: state and local agencies: teleconferences**

AB 361 (Rivas) was read a second time and ordered to a third reading on the Senate floor on September 7, 2021. On September 7, 2021, the bill was re-referred to the Committee on Rules where it was re-referred to the Senate Committee on the Judiciary. This bill makes amendments to the Brown Act for local public meetings, the Bagley-Keene Open Meetings Act for public meetings of most State agencies, and the Gloria Romero Open Meetings Act of 2000 for State universities.

As relevant to Commission proceedings, the Governor's Executive Order No. N-29-20 suspends, until September 30, 2021, the requirements of the Bagley-Keene Open Meeting Act for teleconferencing during the COVID-19 pandemic, provided that notice and accessibility requirements are met, the public members are allowed to observe and address the state body at the meeting, and that a state body has a procedure for receiving and swiftly resolving requests for reasonable accommodation for individuals with disabilities, as specified.

Generally, the Bagley-Keene Open Meeting Act, requires, with specified exceptions, that all meetings of a state body be open and public and all persons be permitted to attend any meeting of a state body. The Act requires at least one member of the state body to be physically present at the location specified in the notice of the meeting and requires that all teleconference locations be noticed and made open to the public.

This bill, until January 31, 2022, would extend the suspension of requirements for teleconferencing contained in the Act, subject to specified notice and accessibility requirements, and authorize a state body to hold public meetings through teleconferencing and to make public meetings accessible telephonically, or otherwise electronically, to all members of the public seeking to observe and to address the state body.

The bill declares the Legislature's intent, consistent with the Governor's Executive Order No. N-29-20, to improve and enhance public access to state and local agency meetings during the COVID-19 pandemic and future emergencies by allowing broader access through teleconferencing options.

### **AB 473 California Public Records Act: conforming revisions**

AB 473 (Chau) on September 1, 2021, was sent to Engrossing and Enrolling.

The California Public Records Act requires state and local agencies to make their records available for public inspection, unless an exemption from disclosure applies.

This bill would recodify and reorganize the provisions of the act. The bill would include provisions to govern the effect of recodification and state that the bill is intended to be entirely nonsubstantive in

effect. The bill would contain related legislative findings and declarations. The bill would become operative on January 1, 2023.

This bill would incorporate additional changes proposed by AB 386, AB 562, and SB 823 to be operative only if this bill and AB 386, AB 562, and SB 823 are enacted and this bill is enacted last.

#### **AB 474 California Public Records Act: conforming revisions**

AB 474 (Chau) was enrolled on September 3, 2021.

The California Public Records Act requires state and local agencies to make their records available for public inspection, unless an exemption from disclosure applies.

This bill would enact various conforming and technical changes related to AB 473, which recodifies and reorganizes the California Public Records Act. This bill would only become operative if AB 473 is enacted and reorganizes and makes other nonsubstantive changes to the California Public Records Act that become operative on January 1, 2023. The bill would also specify that any other bill enacted by the Legislature during the 2021 calendar year that takes effect on or before January 1, 2022, and that affects a provision of this bill shall prevail over this act, except as specified.

Most of the changes made by this bill, including amendments to Government Code sections 11124.1, 11125.1, 11126, and 11126.1, are technical in nature or are unrelated to the mandates process.

#### **AB 885 Bagley-Keene Open Meeting Act: teleconferencing**

AB 885 (Quirk) was re-referred to the Assembly Committee on Governmental Organization on March 24, 2021.

The Bagley-Keene Open Meeting Act (Bagley-Keene Act), requires, with specified exceptions, that all meetings of a state body, as defined, be open and public, and all persons be permitted to attend any meetings of a state body, except as provided. The Bagley-Keene Act, among other things, requires a state body that elects to conduct a meeting or proceeding by teleconference to make the portion of the meeting that is required to be open to the public audible to the public at the location specified in the notice of the meeting. This bill would require a state body that elects to conduct a meeting or proceeding by teleconference to make the portion that is required to be open to the public both audibly and visually observable. This bill would also require a state body that elects to conduct a meeting or proceeding by teleconference to post an agenda at the designated primary physical meeting location in the notice of the meeting where members of the public may physically attend the meeting and participate and requires that at least one of the members be present at the primary physical location of the public meeting.

Existing constitutional provisions require that a statute that limits the right of access to the meetings of public bodies or the writings of public officials and agencies be adopted with findings demonstrating the interest protected by the limitation and the need for protecting that interest. This bill would make legislative findings to that effect.

However, this bill did not make it out of its house of origin before the deadline to do so for this year. Therefore, it may become a two-year bill if it clears the Assembly by January 31, 2022.

#### **AB 29 State Bodies: meetings**

AB 29 (Cooper) was re-referred to the Assembly Committee on Appropriations on April 21, 2021 and was held in the suspense file, and on May 20, 2021, it was held under submission.

Existing law, the Bagley-Keene Open Meeting Act, requires that all meetings of a state body, as defined, be open and public, and that all persons be permitted to attend any meeting of a state body, except as otherwise provided in that act. Existing law requires the state body to provide notice of its meeting, including specified information and a specific agenda of the meeting, as provided, to any person who requests that notice in writing and to make that notice available on the internet at least 10 days in advance of the meeting.

This bill would require that notice to include all writings or materials provided for the noticed meeting to a member of the state body by the staff of a state agency, board, or commission, or another member of the state body that are in connection with a matter subject to discussion or consideration at the meeting. The bill would require those writings or materials to be made available on the state body's internet website, and to any person who requests the writings or materials in writing, on the same day as the dissemination of the writings and materials to members of the state body or at least 72 hours in advance of the meeting, whichever is earlier. The bill would prohibit a state body from discussing those writings or materials, or from taking action on an item to which those writings or materials pertain, at a meeting of the state body unless the state body has complied with these provisions.

This bill did not make it out of its house of origin before the deadline to do so for this year. Therefore, it may become a two-year bill if it clears the Assembly by January 31, 2022.

#### **AB 884 State agencies: audits**

AB 884 (Patterson) was referred to the Assembly Committee on Appropriations suspense file on May 5, 2021 and on May 20, 2021, the bill was held under submission.

Existing law requires all state and local agencies with an aggregate spending of \$50,000,000 or more annually to consider establishing an ongoing audit function.

This bill would require all state agencies with an aggregate spending of \$50,000,000 or more annually to establish an ongoing audit function.

Existing law requires any governing body, as defined, that oversees a state agency that performs or reviews internal audits to establish an audit committee. Existing law, the Bagley-Keene Open Meeting Act (Bagley-Keene Act), requires that all meetings of a state body, as defined, be open and public, and all persons be permitted to attend any meeting of a state body, except as provided. Violation of the Bagley-Keene Act is a crime.

This bill would extend the requirements of the Bagley-Keene Act to the internal audit committees established by any governing body if the governing body is subject to the Bagley-Keene Act. By expanding the scope of an existing crime, this bill would impose a state-mandated local program.

Existing law generally requires all internal auditor operations of state agencies to meet specified criteria. If a state agency does not report to a governing body, existing law requires the internal auditor operations to, among other things, report audit findings and recommendations to the head or deputy head of the state agency and to the general counsel of the state agency, if applicable. If a state agency is overseen by a governing body, existing law requires the internal audit operations to, among other things, report audit findings and recommendations to the audit committee and general counsel of the governing body.

This bill would require both of these types of state agencies to post audit findings and recommendations on its internet website within five days of reporting its audit findings and

recommendations, as described above. 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.

This bill did not make it out of its house of origin before the deadline to do so for this year. Therefore, it may become a two-year bill if it clears the Assembly by January 31, 2022.

Commission staff will continue to monitor for any legislation that affects mandates law or the mandates process.