

**SENATE JUDICIARY COMMITTEE**  
**Senator Thomas Umberg, Chair**  
**2023-2024 Regular Session**

AB 1505 (Rodriguez)  
Version: June 3, 2024  
Hearing Date: June 25, 2024  
Fiscal: No  
Urgency: No  
AM

**SUBJECT**

California Earthquake Authority: closed meetings

**DIGEST**

This bill authorizes the governing board or advisory panel of the California Earthquake Authority (CEA) to meet in closed session under the Bagley-Keene Open Meeting Act (Bagley-Keene Act) when addressing the development of rates, contracting strategy, or competitive strategy when discussion in open session concerning those matters would prejudice the position of CEA. The bill authorizes CEA's governing board or advisory panel, at any regular or special meeting, to meet in a closed session as described above upon a two-thirds vote of the members present at the meeting. The bill requires that, after a closed session is held, the CEA's governing board or advisory panel must reconvene in open session prior to adjournment and report, among other things, that a closed session was held.

**EXECUTIVE SUMMARY**

According to the author and sponsor, global natural catastrophes caused by climate change have substantially increased prices in the insurance and reinsurance markets, making it more difficult for CEA to meet its fiduciary obligations to customers. The governing board of the CEA is not currently authorized to meet in closed session under the Bagley-Keene Act to discuss negotiation strategies amongst themselves. Given these recent market challenges, this bill seeks to authorize the governing board or advisory panel of CEA to meet in closed session for purposes of developing rates, contracting strategy, and competitive strategy when discussion in open session would prejudice the position of CEA. The bill is sponsored by CEA. No timely opposition was received by this Committee. The bill passed the Senate Insurance Committee on a vote of 7 to 0.

**PROPOSED CHANGES TO THE LAW**

Existing law:

- 1) Provides, pursuant to the California Constitution, that the people have the right of access to information concerning the conduct of the people's business, and, therefore, the meetings of public bodies and the writings of public officials and agencies are required to be open to public scrutiny. (Cal. const. art. I, § 3(b)(1).)
  - a) Requires a statute to be broadly construed if it furthers the people's right of access, and narrowly construed if it limits the right of access. (Cal. const. art. I, § 3(b)(1).)
  - b) Requires a statute that limits the public's right of access to be adopted with findings demonstrating the interest protected by the limitation and the need for protecting that interest. (Cal. const. art. I, § 3(b)(1).)
- 2) Establishes the Bagley-Keene Act, which requires state bodies to conduct their business in open public meetings, except as provided by the Act, and establishes requirements and procedures for such meetings. (Gov. Code § 11120 et seq.)<sup>1</sup>
  - a) "State bodies" covered by the Bagley-Keene Act include every state board, commission or body created by statute or required by law to conduct official meetings, every commission created by executive order, any board or body exercising the authority of a state body by delegation, any advisory body created by formal action of a state body, any state body that is supported by public funds and on which a member of a state body serves in their official capacity, and the State Bar of California. (§ 11121.)
  - b) "State bodies" do not include specified legislative agencies, agencies subject to the Brown Act, and certain educational and health-related agencies. (§ 11121.1.)
- 3) Authorizes state bodies to meet in closed session for various purposes including, among others, discussing personnel issues, pending litigation, or real estate purchases.
  - a) Provides numerous authorizations to meet in closed session to specific state bodies for certain reasons or purposes, such as to protect the information being discussed. (§ 11126.)
- 4) Establishes the CEA, administered under the Insurance Commissioner (IC) and governed by a three-member board, as specified. (Ins. Code § 10089.6 & § 10089.7.)
- 5) Specifies CEA has the power to conduct the affairs of the authority and may perform all acts necessary or convenient in the exercise of that power. (Ins. Code § 10089.7.)

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<sup>1</sup> All further references are to the Government Code unless specified otherwise.

- a) CEA is governed by a three-member governing board consisting of the Governor, the Treasurer, and the Insurance Commissioner, each of whom may name designees to serve as board members in their place. (*Ibid.* at (a).)
- b) The board is advised by an advisory panel, as provided. (*Ibid.* at (b).)

This bill:

- 1) Authorizes the governing board or advisory panel of CEA to meet in closed session under the Bagley-Keene Act when addressing the development of rates, contracting strategy, or competitive strategy when discussion in open session concerning those matters would prejudice the position of the CEA.
- 2) Authorizes CEA's governing board or advisory panel, at any regular or special meeting, to meet in a closed session upon a two-thirds vote of the members present at the meeting.
- 3) Requires CEA's governing board or advisory panel, after a closed session is held, to reconvene in open session prior to adjournment and report, among other things, that a closed session was held.

### COMMENTS

#### 1. Stated need for the bill

The author writes:

The Bagley-Keene Open Meeting Act requires meetings of state bodies to be agendaized and made open and accessible to the public. While this is generally a good practice to ensure transparency, it can sometimes hinder the work of a state body like the CEA's Governing Board. The CEA is privately funded entirely by customers and writes earthquake insurance policies for its participating homeowner insurance companies. They strive to negotiate low rates for consumers, but are hindered in their ability to strategize when all meetings must be open to the public, and therefore visible to their competitors.

#### 2. Public access to the open meetings is a constitutional and statutory right

In 2004, the right of public access was enshrined in the California Constitution with the passage of Proposition 59 (Nov. 3, 2004, statewide gen. elec.),<sup>2</sup> which amended the California Constitution to specifically protect the right of the public to access and obtain government records: "The people have the right of access to information concerning the

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<sup>2</sup> Prop. 59 was placed on the ballot by a unanimous vote of both houses of the Legislature. (SCA 1 (Burton, Ch. 1, Stats. 2004))

conduct of the people's business, and therefore the meetings of public bodies and the writings of public officials and agencies shall be open to public scrutiny." (Cal. Const., art. I, sec. 3 (b)(1).) The California Constitution requires a statute to be broadly construed if it furthers the people's right of access and narrowly construed if it limits the right of access, and requires a statute that limits the public's right of access to be adopted with findings demonstrating the interest protected by the limitation and the need for protecting that interest. (Cal. const. art. I, § 3(b)(1).)

Bagley-Keene generally requires state bodies to conduct their meetings openly and make them accessible to the public. The first section of Bagley-Keene lays out the public policy of the act, stating:

It is the public policy of this state that public agencies exist to aid in the conduct of the people's business and the proceedings of public agencies be conducted openly so that the public may remain informed. In enacting this article the Legislature finds and declares that it is the intent of the law that actions of state agencies be taken openly and that their deliberation be conducted openly.

The people of this state do not yield their sovereignty to the agencies which serve them. The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may retain control over the instruments they have created. (§ 11120.)

A state body includes boards, commissions, committees, councils, and any other public agencies created by state statute or executive order, with some exceptions, and the State Bar. (§ 11121.) The law does not apply to individual officials, advisory committees with no decision-making authority, or the California State Legislature. The law also requires state bodies to provide advance notice of their meetings and agendas and to allow public comments on matters under consideration. (Gov. Code § 11125.) Bagley-Keene allows state bodies to meet in closed sessions for the purposes of discussing personnel issues, pending litigation, or real estate purchases. (§ 11126.) Additionally, there are several authorizations to meet in closed session granted to specific state bodies for certain reasons or purposes, such as to protect the information being discussed. (*Id.*) For instance, the State Compensation Insurance Fund (SCIF) is authorized to meet in closed session for, among other reasons, to the extent that the session would address the development of rates, contracting strategy, underwriting, or competitive strategy, pursuant to the powers granted to the board in Chapter 4 (commencing with Section 11770) of Part 3 of Division 2 of the Insurance Code, when discussion in open session concerning those matters would prejudice the position of SCIF. (§ 11126(j).)

3. Limitation on access to public meetings

The bill's provisions would limit the public's access to public meetings by allowing CEA to meet in closed session when addressing the development of rates, contracting strategy, or competitive strategy when discussion in open session concerning those matters would prejudice the position of the CEA. This authorization is similar to the one granted to SCIF. The major difference between the authorizations under this bill is it would require a two-thirds vote of CEA's governing board or advisory panel at any regular or special meeting in order to meet in closed session. The advisory panel consist of 11 voting members – six appointed by the Governor, three by the Insurance Commissioner, one by the Senate Rules Committee, and one by the Speaker of the Assembly. There is precedence for this under the Bagley-Keene Act provides a similar requirement for a state body to hold session to consider matters posing a threat or potential threat of criminal or terrorist activity against the personnel, property, buildings, facilities, or equipment, including electronic data, owned, leased, or controlled by the state body, where disclosure of these considerations could compromise or impede the safety or security of the personnel, property, buildings, facilities, or equipment, including electronic data, owned, leased, or controlled by the state body. (§ 11126(a)(18).)

The Senate Insurance Committee analysis of this bill notes:

The California Earthquake Authority (CEA) writes earthquake insurance policies for its participating homeowner insurance companies. The CEA operates in a competitive insurance market and is routinely involved in negotiating commercial agreements with third parties to meet the needs of its policyholders. Although privately-funded, as a public entity it is bound to the Bagley-Keene Act to hold open meetings. However, discussing reinsurance negotiation strategies in a public forum can jeopardize their opportunity to secure the best rates for policyholders.<sup>3</sup>

The bill provides findings for the need for this limit on access to public meetings, stating it is to ensure that the California Earthquake Authority governing board and advisory panel may develop rates, contract strategy, or competitive strategy without prejudice to its position. In light of the fact that the closed session only applies when discussion in open session concerning rates, contracting strategy, or competitive strategy would prejudice the position of CEA, the limitation on public meetings seems warranted.

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<sup>3</sup> Sen. Ins. Comm. analysis of AB 1505 (2023-24 reg. sess.) as amended June 3, 2024 at p. 3.

4. Statements in support

The CEA, the sponsor of the bill, writes in support stating:

The CEA is entirely privately funded through policyholder premiums and its Governing Board (comprised of the Governor, Treasurer, and Insurance Commissioner as voting members, and the Speaker of the Assembly and Chair of the Senate Rules Committee, as ex officio non-voting members) has a clear duty to develop contracting and competitive strategies for the effective negotiation of financing and risk transfer contracts, all of which are paid for with policyholder funds.

The discussion and development of these strategies in public sessions undermines the ability of the Governing Board and CEA to maximize value for policyholders because competitors and counterparties are given full access to the CEA's negotiating strategies. In a reinsurance market favorable to CEA this has been less of a concern. In current market conditions, public disclosure of CEA's proprietary contracting and competitive strategies clearly risks harm to policyholders by increasing CEA's costs and its premium rates.

This narrowly-tailored proposed amendment would allow CEA's Governing Board to conduct those strategic discussions in closed session *only* when discussion of the topic in open session would prejudice the position of the CEA.

**SUPPORT**

California Earthquake Authority (sponsor)

**OPPOSITION**

None received

**RELATED LEGISLATION**

Pending Legislation: None known.

Prior Legislation:

SB 1145 (Machado, Ch. 344, Stats. 2008) made SCIF subject to the Bagley-Keene Act and authorized closed session meetings for, among other reasons, when discussing the development of rates, contracting strategy, underwriting, or competitive strategy, which would prejudice the board if discussed in open meetings.

**PRIOR VOTES**

Senate Insurance Committee (Ayes 7, Noes 0)

This bill was amended on April 24, 2024, to completely change the bill's provisions. The votes below are based on the bill before it was amended on that date.

Senate Governmental Organization Committee (Ayes 14, Noes 0)

Assembly Floor (Ayes 80, Noes 0)

Assembly Appropriations Committee (Ayes 11, Noes 0)

Assembly Emergency Management Committee (Ayes 7, Noes 0)

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