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SB-387 State Bar: attorneys: annual membership fees: meetings: public records. (2015-2016)

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Senate Bill No. 387

CHAPTER 537

An act to amend Sections 6001, 6060.2, 6086.1, 6086.15, 6090.6, 6140, 6145, 6168, 6200, 6232, and 6234 of, to amend, repeal, and add Sections 6026.5 and 6026.7 of, to add Sections 6026.11 and 6060.25 to, and to repeal and add Section 6140.16 of, the Business and Professions Code, and to amend Sections 6252, 6276.04, 11121, and 11121.1 of the Government Code, relating to the State Bar.

[Approved by Governor October 06, 2015. Filed with Secretary of State October 06, 2015.]

LEGISLATIVE COUNSEL'S DIGEST

SB 387, Jackson. State Bar: attorneys: annual membership fees: meetings: public records.

Existing law, the State Bar Act, provides for the licensure and regulation of attorneys by the State Bar of California, a public corporation. The State Bar is governed by a board of trustees. Existing law authorizes the board, among other duties, to aid in all matters pertaining to the improvement of the administration of justice, including all matters that may advance the professional interests of the members of the State Bar.

Existing law requires the State Bar to issue an Annual Discipline Report describing the performance and condition of the State Bar discipline system. Existing law requires the report to cover the previous calendar year and to include accurate and complete descriptions of, among other things, the existing backlog of cases within the discipline system and a description of the programs at the State Bar directed at preventing acts warranting discipline. Existing law requires the board to appoint a lawyer admitted to practice in California to serve as chief trial counsel. The Office of the Chief Trial Counsel, which is responsible for reviewing charges of lawyer misconduct, investigates and prosecutes complaints about attorneys.

This bill would revise the content of the information in the report. The bill would additionally require the backlog of cases to include other matters opened in the Office of the Chief Trial Counsel and pending beyond 6 months after receipt, as specified.

Existing law, until January 1, 2016, requires the board to charge an annual membership fee for active members of up to \$315 for 2015.

This bill would, until January 1, 2017, require the board to charge that annual membership fee for 2016.

Existing law requires the State Bar to review its workload standards to measure the effectiveness and efficiency of its disciplinary activities, including, but not limited to, the State Bar Court and the Client Security Fund, and to provide guidance to the State Bar and the Legislature in allocating resources, as specified.

This bill would delete that requirement. The bill would, instead, require the State Bar to develop and implement a specified workforce plan for its discipline system and conduct a public sector compensation and benefits study to reassess the numbers and classifications of staff required to conduct the disciplinary activities. The bill would require the State Bar to conduct a thorough

analysis of its operating costs and develop a spending plan to determine a reasonable amount for the annual membership fee, as specified. The bill would require the State Bar to report to the Legislature by May 15, 2016.

Existing law requires the board to engage the services of an independent public accounting firm for an audit of its financial statement for each fiscal year.

This bill would require, effective January 1, 2016, the State Bar to contract with the California State Auditor's Office to conduct an in-depth financial audit of the State Bar, including an audit of its financial statement, internal controls, and relevant management practices, as provided, and would require the office to provide a copy of the audit to the board, the Chief Justice of the Supreme Court, and to the Assembly and Senate Committees on Judiciary.

Under existing law, no law of this state restricting or prescribing a mode of procedure for the exercise of powers of state public bodies or state agencies is applicable to the State Bar, unless the Legislature expressly so declares. Except as specified, existing law requires every meeting of the board to be open to the public.

Existing law, the Bagley-Keene Open Meeting Act, requires that all meetings of a state body be open and public and that all persons be permitted to attend any meeting of a state body, subject to certain conditions and exceptions. A violation of these provisions is a misdemeanor.

Existing law exempts the board from the act, but requires the board to ensure that its open meeting requirements are consistent with, and conform to, the Bagley-Keene Open Meeting Act.

Existing law, the California Public Records Act, requires state and local agencies to make public records available for inspection, subject to certain exceptions.

This bill, commencing April 1, 2016, would make the State Bar subject to the Bagley-Keene Open Meeting Act. The bill would provide that the Bagley-Keene Open Meeting Act does not apply to the Judicial Nominees Evaluation Commission or the Committee of Bar Examiners. By expanding the scope of that crime, the bill would impose a state-mandated local program. The bill would also make the State Bar subject to the California Public Records Act. The bill would require any identifying information submitted by an applicant to the State Bar for admission and a license to practice law and all State Bar admission records to be confidential and would prohibit disclosure pursuant to any state law, including the California Public Records Act. The bill would make other conforming changes in this regard.

This bill would incorporate additional changes in Section 11121 of the Government Code proposed by AB 85 that would become operative only if AB 85 and this bill are both chaptered and become effective on or before January 1, 2016, and this bill is chaptered last.

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.

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 Local Program: yes

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 6001 of the Business and Professions Code is amended to read:

6001. The State Bar of California is a public corporation. It is hereinafter designated as the State Bar.

The State Bar has perpetual succession and a seal and it may sue and be sued. It may, for the purpose of carrying into effect and promoting its objectives:

- (a) Make contracts.
- (b) Borrow money, contract debts, issue bonds, notes and debentures and secure the payment or performance of its obligations.
- (c) Own, hold, use, manage and deal in and with real and personal property.
- (d) Construct, alter, maintain and repair buildings and other improvements to real property.

(e) Purchase, lease, obtain options upon, acquire by gift, bequest, devise or otherwise, any real or personal property or any interest therein.

(f) Sell, lease, exchange, convey, transfer, assign, encumber, pledge, dispose of any of its real or personal property or any interest therein, including without limitation all or any portion of its income or revenues from membership fees paid or payable by members.

(g) Do all other acts incidental to the foregoing or necessary or expedient for the administration of its affairs and the attainment of its purposes.

Pursuant to those powers enumerated in subdivisions (a) to (g), inclusive, it is recognized that the State Bar has authority to raise revenue in addition to that provided for in Section 6140 and other statutory provisions. The State Bar is empowered to raise that additional revenue by any lawful means, including, but not limited to, the creation of foundations or not-for-profit corporations.

The State Bar shall conspicuously publicize to its members in the annual dues statement and other appropriate communications, including its Web site and electronic communications, that its members have the right to limit the sale or disclosure of member information not reasonably related to regulatory purposes. In those communications the State Bar shall note the location of the State Bar's privacy policy, and shall also note the simple procedure by which a member may exercise his or her right to prohibit or restrict, at the member's option, the sale or disclosure of member information not reasonably related to regulatory purposes. On or before May 1, 2005, the State Bar shall report to the Assembly and Senate Committees on Judiciary regarding the procedures that it has in place to ensure that members can appropriately limit the use of their member information not reasonably related to regulatory purposes, and the number of members choosing to utilize these procedures.

No law of this state restricting, or prescribing a mode of procedure for the exercise of powers of state public bodies or state agencies, or classes thereof, including, but not by way of limitation, the provisions contained in Division 3 (commencing with Section 11000), Division 4 (commencing with Section 16100), and Part 1 (commencing with Section 18000) and Part 2 (commencing with Section 18500) of Division 5, of Title 2 of the Government Code, shall be applicable to the State Bar, unless the Legislature expressly so declares. Notwithstanding the foregoing or any other law, pursuant to Sections 6026.7 and 6026.11, the State Bar is subject to the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code) and, commencing April 1, 2016, the Bagley-Keene Open Meeting Act (Article 9 (commencing with Section 11120) of Chapter 1 of Part 1 of Division 3 of Title 2 of the Government Code).

SEC. 2. Section 6026.5 of the Business and Professions Code is amended to read:

6026.5. (a) Every meeting of the board shall be open to the public except those meetings, or portions thereof, relating to:

(1) Consultation with counsel concerning pending or prospective litigation.

(2) Involuntary enrollment of active members as inactive members due to mental infirmity or illness or addiction to intoxicants or drugs.

(3) The qualifications of judicial appointees, nominees, or candidates.

(4) The appointment, employment or dismissal of an employee, consultant, or officer of the State Bar or to hear complaints or charges brought against such employee, consultant, or officer unless such person requests a public hearing.

(5) Disciplinary investigations and proceedings, including resignations with disciplinary investigations or proceedings pending, and reinstatement proceedings.

(6) Appeals to the board from decisions of the Board of Legal Specialization refusing to certify or recertify an applicant or suspending or revoking a specialist's certificate.

(7) Appointments to or removals from committees, boards, or other entities.

(8) Joint meetings with agencies provided in Article VI of the California Constitution.

(b) This section shall remain in effect only until April 1, 2016, and as of that date is repealed, unless a later enacted statute, that is enacted before April 1, 2016, deletes or extends that date.

SEC. 3. Section 6026.5 is added to the Business and Professions Code, to read:

6026.5. (a) Pursuant to Section 6026.7, every meeting of the board shall be open to the public except those meetings, or portions thereof, relating to:

(1) Consultation with counsel concerning pending or prospective litigation.

(2) Involuntary enrollment of active members as inactive members due to mental infirmity or illness or addiction to intoxicants or drugs.

(3) The qualifications of judicial appointees, nominees, or candidates.

(4) The appointment, employment, or dismissal of an employee, consultant, or officer of the State Bar or to hear complaints or charges brought against such employee, consultant, or officer, unless such person requests a public hearing.

(5) Disciplinary investigations and proceedings, including resignations with disciplinary investigations or proceedings pending, and reinstatement proceedings.

(6) Appeals to the board from decisions of the Board of Legal Specialization refusing to certify or recertify an applicant or suspending or revoking a specialist's certificate.

(7) Appointments to or removals from committees, boards, or other entities.

(8) Joint meetings with agencies provided in Article VI of the California Constitution.

(b) This section shall become operative on April 1, 2016.

SEC. 4. Section 6026.7 of the Business and Professions Code is amended to read:

6026.7. (a) The board shall ensure that its open meeting requirements, as described in Section 6026.5, are consistent with, and conform to, the Bagley-Keene Open Meeting Act (Article 9 (commencing with Section 11120) of Division 3 of Title 2 of the Government Code).

(b) This section shall remain in effect only until April 1, 2016, and as of that date is repealed, unless a later enacted statute, that is enacted before April 1, 2016, deletes or extends that date.

SEC. 5. Section 6026.7 is added to the Business and Professions Code, to read:

6026.7. (a) The State Bar is subject to the Bagley-Keene Open Meeting Act (Article 9 (commencing with Section 11120) of Chapter 1 of Part 1 of Division 3 of Title 2 of the Government Code) and all meetings of the State Bar are subject to the Bagley-Keene Open Meeting Act.

(b) Notwithstanding any other law, the Bagley-Keene Open Meeting Act shall not apply to the Judicial Nominees Evaluation Commission or the Committee of Bar Examiners.

(c) This section shall become operative on April 1, 2016.

SEC. 6. Section 6026.11 is added to the Business and Professions Code, to read:

6026.11. The State Bar is subject to the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code) and all public records and writings of the State Bar are subject to the California Public Records Act.

SEC. 7. Section 6060.2 of the Business and Professions Code is amended to read:

6060.2. All investigations or proceedings conducted by the State Bar concerning the moral character of an applicant shall be confidential and shall not be disclosed pursuant to any state law, including, but not limited to, the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code) unless the applicant, in writing, waives the confidentiality. However, the records of the proceeding may be subject to lawfully issued subpoenas.

SEC. 8. Section 6060.25 is added to the Business and Professions Code, immediately following Section 6060.2, to read:

6060.25. Notwithstanding any other law, any identifying information submitted by an applicant to the State Bar for admission and a license to practice law and all State Bar admission records, including, but not limited to, bar examination scores, law school grade point average (GPA), undergraduate GPA, Law School Admission Test scores, race or ethnicity, and any information contained within the State Bar Admissions database or any file or other data created by the State Bar with information submitted by the applicant that may identify an individual applicant, shall be confidential and shall not be disclosed pursuant to any state law, including, but not limited to, the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code).

SEC. 9. Section 6086.1 of the Business and Professions Code is amended to read:

6086.1. (a) (1) Subject to subdivision (b), and except as otherwise provided by law, hearings and records of original disciplinary proceedings in the State Bar Court shall be public, following a notice to show cause.

(2) Subject to subdivision (b), and except as otherwise provided by law, hearings and records of the following matters shall be public:

(A) Filings for involuntary inactive enrollment or restriction under subdivision (a), (c), (d), or (e) of Section 6007.

(B) Petitions for reinstatement under Section 6078.

(C) Proceedings for suspension or disbarment under Section 6101 or 6102.

(D) Payment information from the Client Security Fund pursuant to Section 6140.5.

(E) Actions to cease a law practice or assume a law practice under Section 6180 or 6190.

(b) All disciplinary investigations are confidential until the time that formal charges are filed and all investigations of matters identified in paragraph (2) of subdivision (a) are confidential until the formal proceeding identified in paragraph (2) of subdivision (a) is instituted. These investigations shall not be disclosed pursuant to any state law, including, but not limited to, the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code). This confidentiality requirement may be waived under any of the following exceptions:

(1) The member whose conduct is being investigated may waive confidentiality.

(2) The Chief Trial Counsel or President of the State Bar may waive confidentiality, but only when warranted for protection of the public. Under those circumstances, after private notice to the member, the Chief Trial Counsel or President of the State Bar may issue, if appropriate, one or more public announcements or make information public confirming the fact of an investigation or proceeding, clarifying the procedural aspects and current status, and defending the right of the member to a fair hearing. If the Chief Trial Counsel or President of the State Bar for any reason declines to exercise the authority provided by this paragraph, or disqualifies himself or herself from acting under this paragraph, he or she shall designate someone to act in his or her behalf. Conduct of a member that is being inquired into by the State Bar but that is not the subject of a formal investigation shall not be disclosed to the public.

(3) The Chief Trial Counsel or his or her designee may waive confidentiality pursuant to Section 6044.5.

(c) Notwithstanding the confidentiality of investigations, the State Bar shall disclose to any member of the public so inquiring, any information reasonably available to it pursuant to subdivision (o) of Section 6068, and to Sections 6086.7, 6086.8, and 6101, concerning a member of the State Bar which is otherwise a matter of public record, including civil or criminal filings and dispositions.

SEC. 10. Section 6086.15 of the Business and Professions Code is amended to read:

6086.15. (a) The State Bar shall issue an Annual Discipline Report by April 30 of each year describing the performance and condition of the State Bar discipline system, including all matters that affect public protection. The report shall cover the previous calendar year and shall include accurate and complete descriptions of all of the following:

(1) The existing backlog of cases within the discipline system, including the number of complaints as of December 31 of the preceding year that were pending beyond six months after receipt without dismissal, admonition, or the filing of a notice of disciplinary charges. In addition to written complaints received by the State Bar, the backlog of cases shall include other matters opened in the Office of the Chief Trial Counsel and pending beyond six months after receipt without the filing of notices of disciplinary charges, or the initiation of other disciplinary proceedings in the State Bar Court for the purpose of seeking the imposition of discipline against a member of the State Bar, and tables showing time periods beyond six months and the number in each category and a discussion of the reason for the extended periods.

(2) The number of inquiries and complaints and their disposition.

(3) The number, average pending times, and types of matters self-reported by members of the State Bar pursuant to subdivision (o) of Section 6068 and subdivision (c) of Section 6086.8.

(4) The number, average pending times, and types of matters reported by other sources pursuant to Sections 6086.7, 6086.8, 6091.1, subdivision (b) of Section 6101, and Section 6175.6.

(5) The speed of complaint handling and dispositions by type, measured by the median and the average processing times.

(6) The number, average pending times, and types of filed notices of disciplinary charges and formal disciplinary outcomes.

(7) The number, average pending times, and types of other matters, including petitions to terminate practice pursuant to Section 6180 or 6190, interim suspensions and license restrictions pursuant to Section 6007, motions to enforce a binding arbitration award, judgment, or agreement pursuant to subdivision (d) of Section 6203, motions to revoke probation, letters of warning, private reprovals, admonitions, and agreements in lieu of discipline.

(8) The number, average pending times, and outcomes of complaints involving a State Bar member who has been disbarred or who has resigned, and is engaged in the unauthorized practice of law, including referrals to district attorneys, city attorneys, or other prosecuting authorities, or petitions to terminate practice pursuant to Section 6180.

(9) The number, average pending times, and outcomes of complaints against nonattorneys engaged in the unauthorized practice of law, including referrals to district attorneys, city attorneys, or other prosecuting authorities; petitions to terminate practice pursuant to Section 6126.3; or referrals to prosecuting authorities or actions by the State Bar pursuant to Section 6126.7.

(10) A description of the condition of the Client Security Fund, including an accounting of payouts.

(11) An accounting of the cost of the discipline system by function.

(b) The Annual Discipline Report shall include statistical information presented in a consistent manner for year-to-year comparison and shall compare the information required under subdivision (a) to similar information for the previous three years.

(c) The Annual Discipline Report shall be presented to the Chief Justice of California, to the Governor, to the Speaker of the Assembly, to the President pro Tempore of the Senate, and to the Assembly and Senate Judiciary Committees, for their consideration and shall be considered a public document.

SEC. 11. Section 6090.6 of the Business and Professions Code is amended to read:

6090.6. In a disciplinary proceeding, the State Bar shall have access, on an ex parte basis, to all nonpublic court records relevant to the competence or performance of its members, provided that these records shall remain confidential and shall not be disclosed pursuant to any state law, including, but not limited to, the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code). This access, for investigation and enforcement purposes, shall not be limited by any court order sealing those records, except a court order authorized by Section 851.6, 851.7, 851.8, or 851.85 of the Penal Code. The State Bar may disclose publicly the nature and content of those records, including sealed records other than those specified immediately above in this section, after notice of intention to disclose all or a part of the records has been given to the parties in the underlying action. A party to the underlying action who would be adversely affected by the disclosure may serve notice on the State Bar within 10 days of receipt of the notice of intention to disclose the records that it opposes the disclosure and will seek a hearing in the court of competent jurisdiction on an expedited basis.

SEC. 12. Section 6140 of the Business and Professions Code, as amended by Section 3 of Chapter 429 of the Statutes of 2014, is amended to read:

6140. (a) The board shall fix the annual membership fee for active members for 2016 at a sum not exceeding three hundred fifteen dollars (\$315).

(b) The annual membership fee for active members is payable on or before the first day of February of each year. If the board finds it appropriate and feasible, it may provide by rule for payment of fees on an installment basis with interest, by credit card, or other means, and may charge members choosing any alternative method of payment an additional fee to defray costs incurred by that election.

(c) This section shall remain in effect only until January 1, 2017, and, as of that date, is repealed, unless a later enacted statute, that is enacted before January 1, 2017, deletes or extends that date.

SEC. 13. Section 6140.16 of the Business and Professions Code is repealed.

SEC. 14. Section 6140.16 is added to the Business and Professions Code, to read:

6140.16. (a) To align its staffing with its mission to protect the public as provided in Section 6001.1 and to provide guidance to the State Bar and the Legislature in allocating resources, the State Bar shall develop and implement a workforce plan for its discipline system and conduct a public sector compensation and benefits study. The workforce plan and compensation study shall be used to reassess the numbers and classifications of staff required to conduct the activities of the State Bar's disciplinary activities.

(b) The workforce planning shall include the development and recommendation of an appropriate backlog goal, an assessment of the staffing needed to achieve that goal while ensuring that the discipline process is not compromised, and the creation of policies and procedures sufficient to provide adequate guidance to the staff of each unit within the discipline system.

(c) In addition to the requirements in subdivisions (a) and (b), the State Bar shall conduct a thorough analysis of its priorities and necessary operating costs and develop a spending plan, which includes its fund balances, to determine a reasonable amount for the annual membership fee that reflects its actual or known costs and those to implement its workforce plan.

(d) The State Bar shall submit a report on its workforce plan and spending plan to the Legislature by May 15, 2016, so that the plans can be reviewed in conjunction with the bill that would authorize the imposition of the State Bar's membership fee. The report shall be submitted in compliance with Section 9795 of the Government Code. The State Bar shall complete and implement its workforce plan by December 31, 2016.

SEC. 15. Section 6145 of the Business and Professions Code is amended to read:

6145. (a) The board shall engage the services of an independent national or regional public accounting firm with at least five years of experience in governmental auditing for an audit of its financial statement for each fiscal year. The financial statement shall be promptly certified under oath by the Treasurer of the State Bar, and a copy of the audit and financial statement shall be submitted within 120 days of the close of the fiscal year to the board, to the Chief Justice of the Supreme Court, and to the Assembly and Senate Committees on Judiciary.

The audit shall examine the receipts and expenditures of the State Bar and the State Bar sections to ensure that the receipts of the sections are being applied, and their expenditures are being made, in compliance with subdivision (a) of Section 6031.5, and that the receipts of the sections are applied only to the work of the sections.

The audit also shall examine the receipts and expenditures of the State Bar to ensure that the funds collected on behalf of the Conference of Delegates of California Bar Associations as the independent successor entity to the former Conference of Delegates of the State Bar are conveyed to that entity, that the State Bar has been paid or reimbursed for the full cost of any administrative and support services provided to the successor entity, including the collection of fees or donations on its behalf, and that no mandatory dues are being used to fund the activities of the successor entity.

In selecting the accounting firm, the board shall consider the value of continuity, along with the risk that continued long-term engagements of an accounting firm may affect the independence of that firm.

(b) The board shall contract with the California State Auditor's Office to conduct a performance audit of the State Bar's operations from July 1, 2000, to December 31, 2000, inclusive. A copy of the performance audit shall be submitted by May 1, 2001, to the board, to the Chief Justice of the Supreme Court, and to the Assembly and Senate Committees on Judiciary.

Every two years thereafter, the board shall contract with the California State Auditor's Office to conduct a performance audit of the State Bar's operations for the respective fiscal year, commencing with January 1, 2002, to December 31, 2002, inclusive. A copy of the performance audit shall be submitted within 120 days of the close of the fiscal year for which the audit was performed to the board, to the Chief Justice of the Supreme Court, and to the Assembly and Senate Committees on Judiciary.

For the purposes of this subdivision, the California State Auditor's Office may contract with a third party to conduct the performance audit. This subdivision is not intended to reduce the number of audits the California State Auditor's Office may otherwise be able to conduct.

(c) Effective January 1, 2016, the board shall contract with the California State Auditor's Office to conduct an in-depth financial audit of the State Bar, including an audit of its financial statement, internal controls, and relevant management practices. The contract shall include reimbursement for the California State Auditor's Office for the costs of conducting the audit. The audit shall, at a minimum, examine the revenues, expenditures, and reserves of the State Bar, including all fund transfers. The California State Auditor's Office shall commence the audit no later than January 1, 2016, and a copy of the audit shall be submitted by May 15, 2016, to the board, the Chief Justice of the Supreme Court, and to the Assembly and Senate Committees on Judiciary. The audit shall be submitted in compliance with Section 9795 of the Government Code. This subdivision shall cease to be operative January 1, 2017.

SEC. 16. Section 6168 of the Business and Professions Code is amended to read:

6168. The State Bar may conduct an investigation of the conduct of the business of a law corporation.

Upon such investigation, the Board of Trustees, or a committee authorized by it, shall have power to issue subpoenas, administer oaths, examine witnesses, and compel the production of records, in the same manner as upon an investigation or formal hearing in a disciplinary matter under the State Bar Act. Such investigation shall be private and confidential and shall not be disclosed

pursuant to any state law, including, but not limited to, the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code), except to the extent that disclosure of facts and information may be required if a cease and desist order is thereafter issued and subsequent proceedings are had.

SEC. 17. Section 6200 of the Business and Professions Code is amended to read:

6200. (a) The board of trustees shall, by rule, establish, maintain, and administer a system and procedure for the arbitration, and may establish, maintain, and administer a system and procedure for mediation of disputes concerning fees, costs, or both, charged for professional services by members of the State Bar or by members of the bar of other jurisdictions. The rules may include provision for a filing fee in the amount as the board may, from time to time, determine.

(b) This article shall not apply to any of the following:

(1) Disputes where a member of the State Bar of California is also admitted to practice in another jurisdiction or where an attorney is only admitted to practice in another jurisdiction, and he or she maintains no office in the State of California, and no material portion of the services were rendered in the State of California.

(2) Claims for affirmative relief against the attorney for damages or otherwise based upon alleged malpractice or professional misconduct, except as provided in subdivision (a) of Section 6203.

(3) Disputes where the fee or cost to be paid by the client or on his or her behalf has been determined pursuant to statute or court order.

(c) Unless the client has agreed in writing to arbitration under this article of all disputes concerning fees, costs, or both, arbitration under this article shall be voluntary for a client and shall be mandatory for an attorney if commenced by a client. Mediation under this article shall be voluntary for an attorney and a client.

(d) The board of trustees shall adopt rules to allow arbitration and mediation of attorney fee and cost disputes under this article to proceed under arbitration and mediation systems sponsored by local bar associations in this state. Rules of procedure promulgated by local bar associations are subject to review by the board or a committee designated by the board to ensure that they provide for a fair, impartial, and speedy hearing and award.

(e) In adopting or reviewing rules of arbitration under this section, the board shall provide that the panel shall include one attorney member whose area of practice is either, at the option of the client, civil law, if the attorney's representation involved civil law, or criminal law, if the attorney's representation involved criminal law, as follows:

(1) If the panel is composed of three members the panel shall include one attorney member whose area of practice is either, at the option of the client, civil or criminal law, and shall include one lay member.

(2) If the panel is composed of one member, that member shall be an attorney whose area of practice is either, at the option of the client, civil or criminal law.

(f) In any arbitration or mediation conducted pursuant to this article by the State Bar or by a local bar association, pursuant to rules of procedure approved by the board of trustees, an arbitrator or mediator, as well as the arbitrating association and its directors, officers, and employees, shall have the same immunity which attaches in judicial proceedings.

(g) In the conduct of arbitrations under this article the arbitrator or arbitrators may do all of the following:

(1) Take and hear evidence pertaining to the proceeding.

(2) Administer oaths and affirmations.

(3) Issue subpoenas for the attendance of witnesses and the production of books, papers, and documents pertaining to the proceeding.

(h) Participation in mediation is a voluntary consensual process, based on direct negotiations between the attorney and his or her client, and is an extension of the negotiated settlement process. All discussions and offers of settlement are confidential and shall not be disclosed pursuant to any state law, including, but not limited to, the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code), and may not be disclosed in any subsequent arbitration or other proceedings.

SEC. 18. Section 6232 of the Business and Professions Code is amended to read:

6232. (a) The committee shall establish practices and procedures for the acceptance, denial, completion, or termination of attorneys in the Attorney Diversion and Assistance Program, and may recommend rehabilitative criteria for adoption by the board

for acceptance, denial, completion of, or termination from, the program.

(b) An attorney currently under investigation by the State Bar may enter the program in the following ways:

(1) By referral of the Office of the Chief Trial Counsel.

(2) By referral of the State Bar Court following the initiation of a disciplinary proceeding.

(3) Voluntarily, and in accordance with terms and conditions agreed upon by the attorney participant with the Office of the Chief Trial Counsel or upon approval by the State Bar Court, as long as the investigation is based primarily on the self-administration of drugs or alcohol or the illegal possession, prescription, or nonviolent procurement of drugs for self-administration, or on mental illness, and does not involve actual harm to the public or his or her clients. An attorney seeking entry under this paragraph may be required to execute an agreement that violations of this chapter, or other statutes that would otherwise be the basis for discipline, may nevertheless be prosecuted if the attorney is terminated from the program for failure to comply with program requirements.

(c) Neither acceptance into nor participation in the Attorney Diversion and Assistance Program shall relieve the attorney of any lawful duties and obligations otherwise required by any agreements or stipulations with the Office of the Chief Trial Counsel, court orders, or applicable statutes relating to attorney discipline.

(d) An attorney who is not the subject of a current investigation may voluntarily enter, whether by self-referral or referral by a third party, the diversion and assistance program on a confidential basis and such information shall not be disclosed pursuant to any state law, including, but not limited to, the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code). Confidentiality pursuant to this subdivision shall be absolute unless waived by the attorney.

SEC. 19. Section 6234 of the Business and Professions Code is amended to read:

6234. Any information provided to or obtained by the Attorney Diversion and Assistance Program, or any subcommittee or agent thereof, shall be as follows:

(a) Confidential and shall not be disclosed pursuant to any state law, including, but not limited to, the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code). This confidentiality shall be absolute unless waived by the attorney.

(b) Exempt from the provisions of Section 6086.1.

(c) Not discoverable or admissible in any civil proceeding without the written consent of the attorney to whom the information pertains.

(d) Not discoverable or admissible in any disciplinary proceeding without the written consent of the attorney to whom the information pertains.

(e) Except with respect to the provisions of subdivision (d) of Section 6232, the limitations on the disclosure and admissibility of information in this section shall not apply to information relating to an attorney's noncooperation with, or unsuccessful completion of, the Attorney Diversion and Assistance Program, or any subcommittee or agent thereof, or to information otherwise obtained by the Office of the Chief Trial Counsel, by independent means, or from any other lawful source.

SEC. 20. Section 6252 of the Government Code is amended to read:

6252. As used in this chapter:

(a) "Local agency" includes a county; city, whether general law or chartered; city and county; school district; municipal corporation; district; political subdivision; or any board, commission or agency thereof; other local public agency; or entities that are legislative bodies of a local agency pursuant to subdivisions (c) and (d) of Section 54952.

(b) "Member of the public" means any person, except a member, agent, officer, or employee of a federal, state, or local agency acting within the scope of his or her membership, agency, office, or employment.

(c) "Person" includes any natural person, corporation, partnership, limited liability company, firm, or association.

(d) "Public agency" means any state or local agency.

(e) "Public records" includes any writing containing information relating to the conduct of the public's business prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics. "Public records" in the custody of, or maintained by, the Governor's office means any writing prepared on or after January 6, 1975.

(f) (1) "State agency" means every state office, officer, department, division, bureau, board, and commission or other state body or agency, except those agencies provided for in Article IV (except Section 20 thereof) or Article VI of the California Constitution.

(2) Notwithstanding paragraph (1) or any other law, "state agency" shall also mean the State Bar of California, as described in Section 6001 of the Business and Professions Code.

(g) "Writing" means any handwriting, typewriting, printing, photostating, photographing, photocopying, transmitting by electronic mail or facsimile, and every other means of recording upon any tangible thing any form of communication or representation, including letters, words, pictures, sounds, or symbols, or combinations thereof, and any record thereby created, regardless of the manner in which the record has been stored.

SEC. 21. Section 6276.04 of the Government Code is amended to read:

6276.04. Aeronautics Act, reports of investigations and hearings, Section 21693, Public Utilities Code.

Agricultural producers marketing, access to records, Section 59616, Food and Agricultural Code.

Aiding disabled voters, Section 14282, Elections Code.

Air pollution data, confidentiality of trade secrets, Section 6254.7, and Sections 42303.2 and 43206, Health and Safety Code.

Air toxics emissions inventory plans, protection of trade secrets, Section 44346, Health and Safety Code.

Alcohol and drug abuse records and records of communicable diseases, confidentiality of, Section 123125, Health and Safety Code.

Alcoholic beverage licensees, confidentiality of corporate proprietary information, Section 25205, Business and Professions Code.

Ambulatory Surgery Data Record, confidentiality of identifying information, Section 128737, Health and Safety Code.

Apiary registration information, confidentiality of, Section 29041, Food and Agricultural Code.

Archaeological site information and reports maintained by state and local agencies, disclosure not required, Section 6254.10.

Arrest not resulting in conviction, disclosure or use of records, Sections 432.7 and 432.8, Labor Code.

Arsonists, registered, confidentiality of certain information, Section 457.1, Penal Code.

Artificial insemination, donor not natural father, confidentiality of records, Section 7613, Family Code.

Assessor's records, confidentiality of information in, Section 408, Revenue and Taxation Code.

Assessor's records, confidentiality of information in, Section 451, Revenue and Taxation Code.

Assessor's records, display of documents relating to business affairs or property of another, Section 408.2, Revenue and Taxation Code.

Assigned risk plans, rejected applicants, confidentiality of information, Section 11624, Insurance Code.

Attorney applicant, investigation by State Bar, confidentiality of, Section 6060.2, Business and Professions Code.

Attorney applicant, information submitted by applicant and State Bar admission records, confidentiality of, Section 6060.25, Business and Professions Code.

Attorney-client confidential communication, Section 6068, Business and Professions Code, and Sections 952 and 954, Evidence Code.

Attorney, disciplinary proceedings, confidentiality prior to formal proceedings, Section 6086.1, Business and Professions Code.

Attorney, disciplinary proceeding, State Bar access to nonpublic court records, Section 6090.6, Business and Professions Code.

Attorney, law corporation, investigation by State Bar, confidentiality of, Section 6168, Business and Professions Code.

Attorney work product confidentiality in administrative adjudication, Section 11507.6.

Attorney, work product, confidentiality of, Section 6202, Business and Professions Code.

Attorney work product, discovery, Chapter 4 (commencing with Section 2018.010) of Title 4 of Part 4 of the Code of Civil Procedure.

Auditor General, access to records for audit purposes, Sections 10527 and 10527.1.

Auditor General, disclosure of audit records, Section 10525.

Automated forward facing parking control devices, confidentiality of video imaging records from the devices, Section 40240, Vehicle Code.

Automated traffic enforcement system, confidentiality of photographic records made by the system, Section 21455.5, Vehicle Code.

Automobile Insurance Claims Depository, confidentiality of information, Section 1876.3, Insurance Code.

Automobile insurance, investigation of fraudulent claims, confidential information, Section 1872.8, Insurance Code.

Avocado handler transaction records, confidentiality of information, Section 44984, Food and Agricultural Code.

SEC. 22. Section 11121 of the Government Code is amended to read:

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

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

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

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

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

(e) Notwithstanding subdivision (a) of Section 11121.1, the State Bar of California, as described in Section 6001 of the Business and Professions Code. This subdivision shall become operative on April 1, 2016.

SEC. 22.5. Section 11121 of the Government Code is amended to read:

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

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

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

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

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

(e) Notwithstanding subdivision (a) of Section 11121.1, the State Bar of California, as described in Section 6001 of the Business and Professions Code. This subdivision shall become operative on April 1, 2016.

SEC. 23. Section 11121.1 of the Government Code is amended to read:

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

(a) Except as provided in subdivision (e) of Section 11121, state agencies provided for in Article VI of the California Constitution.

(b) Districts or other local agencies whose meetings are required to be open to the public pursuant to the Ralph M. Brown Act (Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5).

(c) State agencies provided for in Article IV of the California Constitution whose meetings are required to be open to the public pursuant to the Grunsky-Burton Open Meeting Act (Article 2.2 (commencing with Section 9027) of Chapter 1.5 of Part 1 of Division 2 of Title 2).

(d) State agencies when they are conducting proceedings pursuant to Section 3596.

(e) State agencies provided for in Section 109260 of the Health and Safety Code, except as provided in Section 109390 of the Health and Safety Code.

(f) The Credit Union Advisory Committee established pursuant to Section 14380 of the Financial Code.

SEC. 24. Section 22.5 of this bill incorporates amendments to Section 11121 of the Government Code proposed by this bill and Assembly Bill 85. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2016, (2) each bill amends Section 11121 of the Government Code, and (3) this bill is enacted after Assembly Bill 85, in which case Section 11121 of the Government Code, as amended by Assembly Bill 85, shall remain operative only until the operative date of this bill, at which time Section 22.5 of this bill shall become operative, and Section 22 of this bill shall not become operative.

SEC. 25. The Legislature finds and declares that this act imposes a limitation on the public's right of access to the meetings of public bodies or the writings of public officials and agencies within the meaning of Section 3 of Article I of the California Constitution. Pursuant to that constitutional provision, the Legislature makes the following findings to demonstrate the interest protected by this limitation and the need for protecting that interest:

In order to allow the State Bar of California to fully accomplish its objectives, including, but not limited to, its licensing, regulatory, and disciplinary functions, it is imperative to protect the privacy interests of those persons submitting information to the State Bar, including any information submitted by an applicant to the State Bar for admission and a license to practice law, those applicants, members, and law corporations subject to investigation and discipline by the State Bar, and those persons participating in discussions and offers of settlement pursuant to arbitration or mediation in order to ensure that any personal or sensitive information is protected as confidential information.

SEC. 26. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.