

**INITIAL STATEMENT OF REASONS
FOR PROPOSED BUILDING STANDARDS
OF THE CALIFORNIA BUILDING STANDARDS COMMISSION
REGARDING THE 2022 CALIFORNIA ADMINISTRATIVE CODE
CALIFORNIA CODE OF REGULATIONS, TITLE 24, PART 1
(BSC 01/22)**

The Administrative Procedure Act (APA) requires that an Initial Statement of Reasons be available to the public upon request when rulemaking action is being undertaken. The following information required by the APA pertains to this particular rulemaking action:

STATEMENT OF SPECIFIC PURPOSE, PROBLEM, RATIONALE and BENEFITS

Government Code Section 11346.2(b)(1) requires a statement of specific purpose of each adoption, amendment, or repeal and the problem the agency intends to address and the rationale for the determination by the agency that each adoption, amendment, or repeal is reasonably necessary to carry out the purpose and address the problem for which it is proposed. The statement shall enumerate the benefits anticipated from the regulatory action, including the benefits or goals provided in the authorizing statute.

ITEM 1

Chapter 1, ARTICLE 4 RULEMAKING FOR THE ADOPTION OF BUILDING STANDARDS, Section 1-403 Public Participation.

1-403 Public Participation, (c) Oral public comments. The California Building Standards Commission (CBSC) conducts public meetings that must comply with the Bagley Keene Open Meeting Act (the Act), such as the Coordinating Council, Code Advisory Committee, and Commission hearings or meetings. The legislative intent of the Act states, "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 Act also authorizes a state body, as defined in the Act, to adopt reasonable regulations limiting the total amount of time allocated for public comment on particular issues and for each individual speaker. The time limit shall be at least twice the allocated time for the public who utilizes a translator or other translating technology receive the same opportunity to directly address the state body. The proposed exception contains the allowance for twice the additional time needed for a translator.

CBSC discussion held at the January and April 2022 commission meetings prompted the CBSC staff to research other state bodies that implement public comment time limit policies and regulations. That information is summarized below. CBSC discussion included the need for an equitable comment opportunity for all public members, and time limits encourage the public to be concise when expressing positions and testimony. There have been many instances at prior CBSC public meetings where some public members were focused on a particular agenda item, and due to lengthy public testimony, later agenda items were rushed, and the public wanting to comment on those later agenda items were not afforded the same time as previous commentors.

Another CBSC remark was the option for public participants to cede or yield their time to another commentor to pool the time as a group. Allowing time to be yielded can create a filibuster thus preventing CBSC and committees from carrying out obligatory business. The

proposed code change recognizes this, and states that time may not be ceded to another speaker.

Lastly, CBSC raised the concern of the public reentering the comment queue after they have provided testimony on a specific topic. As proposed, (c) 1. states the time allocated for each speaker is for a specific issue. The term “issue” is not defined and CBSC staff resisted using the term “agenda item” because often there are several subtopics discussed within an agenda item that require deliberation by CBSC and subsequent public comment.

The Authority and Reference citations are updated to include Government Code Section 11125.7 that authorizes a state body to adopt regulations including time limits for public comment and the public that uses a translating technology may have twice the allotted time.

It is for all the reasons listed above CBSC is exercising this authority to propose time allocation limit regulations in several sections of Article 4 Rulemaking for Adoption of Building Standards, of the California Administrative Code, Part 1 of Title 24.

CAC Recommendation:

Further Study. The CAC recommended that CBSC staff reevaluate how public comment time limits are applied because the language “specific issue” is vague. It was also recommended that CBSC staff include persons with disabilities in the exception.

Agency Response:

Accept. CBSC has provided language to add specificity regarding public comment time limits and how they are intended to be applied, as well as added language in the exception to include persons with disabilities.

ITEM 2

Chapter 1, ARTICLE 4 RULEMAKING FOR THE ADOPTION OF BUILDING STANDARDS, Section 1-409 Code Advisory Committee review.

1-409 Code Advisory Committee Review, (e) Time allocated for public comments.

This new proposed subsection (e) is a pointer to new code Section 1-403 (c) Time allocated for public comments to add clarity to the administrative regulations for Code Advisory Committee (CAC) review, public testimony at the CAC meetings. The succeeding section numbers will be renumbered accordingly.

The Authority and Reference citations are updated to include Government Code Section 11125.7 that authorizes a state body to adopt regulations including time limits for public comment and the public that uses a translating technology may have twice the allotted time.

CAC Recommendation:

Further Study. The CAC recommendation was global, but the recommendation applied to the first item only.

Agency Response:

Disagree. Since the recommendation applied to item 1 only, there are no needed changes to this item.

ITEM 3

Chapter 1, ARTICLE 4 RULEMAKING FOR THE ADOPTION OF BUILDING STANDARDS, Section 1-413 Public comments and related actions.

1-413 Public comments and related actions, (f) is amended to include a pointer to new code Section 1-403 (c) Time allocated for public comments, to add clarity. The Note is relocated to the bottom of section (f), so the statements are connected and follow proper format.

CAC Recommendation:

Further Study. The CAC recommendation was global, but the recommendation applied to the first item only.

Agency Response:

Disagree. Since the recommendation applied to item 1 only, there are no needed changes to this item.

TECHNICAL, THEORETICAL, AND EMPIRICAL STUDY, REPORT, OR SIMILAR DOCUMENTS

Government Code Section 11346.2(b)(3) requires an identification of each technical, theoretical, and empirical study, report, or similar document, if any, upon which the agency relies in proposing the regulation(s).

[April 7, 2022, CBSC meeting](https://www.youtube.com/watch?v=Oh7kpHIQzSc&t=13733s) youtube.com/watch?v=Oh7kpHIQzSc&t=13733s

[Bagley Keene Open Meeting Act](https://leginfo.ca.gov/faces/codes_displayText.xhtml?lawCode=GOV&division=3.&title=2.&part=1.&chapter=1.&article=9) Government Code 11120 – 11133.

leginfo.legislature.ca.gov/faces/codes_displayText.xhtml?lawCode=GOV&division=3.&title=2.&part=1.&chapter=1.&article=9.

STATEMENT OF JUSTIFICATION FOR PRESCRIPTIVE STANDARDS

Government Code Section 11346.2(b)(1) requires a statement of the reasons why an agency believes any mandates for specific technologies or equipment, or prescriptive standards are required.

No specific technology or equipment or prescriptive standard is required. The proposed code changes are administrative for the purposes of conducting a public meeting of a state body.

CONSIDERATION OF REASONABLE ALTERNATIVES

Government Code Section 11346.2(b)(4)(A) requires a description of reasonable alternatives to the regulation and the agency's reasons for rejecting those alternatives. In the case of a regulation that would mandate the use of specific technologies or equipment or prescribe specific action or procedures, the imposition of performance standards shall be considered as an alternate. It is not the intent of this paragraph to require the agency to artificially construct alternatives or describe unreasonable alternatives.

The alternatives considered are listed in Attachment A below. No specific technology or equipment or prescriptive standard is required. The proposed code changes are administrative for the purposes of conducting a public meeting of a state body.

REASONABLE ALTERNATIVES THE AGENCY HAS IDENTIFIED THAT WOULD LESSEN ANY ADVERSE IMPACT ON SMALL BUSINESS

Government Code Section 11346.2(b)(4)(B) requires a description of any reasonable alternatives that have been identified or that have otherwise been identified and brought to the attention of the agency that would lessen any adverse impact on small business.

The proposed code changes are administrative for the purposes of conducting a public meeting of a state body. There are no adverse impacts on small businesses.

FACTS, EVIDENCE, DOCUMENTS, TESTIMONY, OR OTHER EVIDENCE OF NO SIGNIFICANT ADVERSE IMPACT ON BUSINESS

Government Code Section 11346.2(b)(5)(A) requires the facts, evidence, documents, testimony, or other evidence on which the agency relies to support an initial determination that the action will not have a significant adverse economic impact on business.

The proposed code changes are administrative for the purposes of conducting a public meeting of a state body. There are no adverse impacts on businesses.

ASSESSMENT OF EFFECT OF REGULATIONS UPON JOBS AND BUSINESS EXPANSION, ELIMINATION OR CREATION

Government Code Sections 11346.3(b)(1) and 11346.5(a)(10)

CBSC has assessed whether and to what extent this proposal will affect the following:

A. The creation or elimination of jobs within the State of California.

NO

B. The creation of new businesses or the elimination of existing businesses within the State of California.

NO

C. The expansion of businesses currently doing business within the State of California.

NO

D. The benefits of the regulation to the health and welfare of California residents, worker safety, and the state's environment.

NO

ESTIMATED COST OF COMPLIANCE, ESTIMATED POTENTIAL BENEFITS, AND RELATED ASSUMPTIONS USED FOR BUILDING STANDARDS

Government Code Section 11346.2(b)(5)(B)(i) states if a proposed regulation is a building standard, the initial statement of reasons shall include the estimated cost of compliance, the estimated potential benefits, and the related assumptions used to determine the estimates.

The proposed code changes are administrative for the purposes of conducting a public meeting of a state body. There are no cost associates with the regulations.

DUPLICATION OR CONFLICTS WITH FEDERAL REGULATIONS

Government Code Section 11346.2(b)(6) requires a department, board, or commission

within the Environmental Protection Agency, the Resources Agency, or the Office of the State Fire Marshal to describe its efforts, in connection with a proposed rulemaking action, to avoid unnecessary duplication or conflicts with federal regulations contained in the Code of Federal Regulations addressing the same issues. These agencies may adopt regulations different from these federal regulations upon a finding of one or more of the following justifications: (A) The differing state regulations are authorized by law and/or (B) The cost of differing state regulations is justified by the benefit to human health, public safety, public welfare, or the environment.

No Federal Regulations addressing the same issue.

Attachment A - Synopsis: Public Comment Time Limits Pursuant to Bagley-Keene, Regulatory and Policy Approaches

State agencies with Public Comment Time Limits in Regulation (not exhaustive):

CalPERS

CCR, Title 2, Div.1, Chapter 2, Subchapter 1, Art. 1, Section 552.1(b)

[View Document - California Code of Regulations \(westlaw.com\)](#)

This regulation is very precise

Horse Racing Board

CCR, Title 4, Div. 4, Art. 1, Section 1415

[View Document - California Code of Regulations \(westlaw.com\)](#)

This regulation is very precise

CalSTRS

CCR, Title 5, Div. 3, Chapter 1, Art. 2, Section 20511(b)

[View Document - California Code of Regulations \(westlaw.com\)](#)

This regulation is very precise

Fish and Game Commission

CCR, Title 14, Div. 1, Subdivision 3, Chapter 2, Section 665(b)(3)

[View Document - California Code of Regulations \(westlaw.com\)](#)

This regulation is very precise

San Francisco Bay Conservation and Development Commission

CCR, Title 14, Div. 5, Chapter 2, Art. 4, Section 10246(c)

[View Document - California Code of Regulations \(westlaw.com\)](#)

This regulation is more general

Delta Protection Commission

CCR, Title 14, Div. 9, Chapter 1, Section 20010(d)

[View Document - California Code of Regulations \(westlaw.com\)](#)

This regulation is more general

California Energy Commission

CCR, Title 20, Div. 2, Chapter 2, Art. 2, Section 1202(a)

[View Document - California Code of Regulations \(westlaw.com\)](#)

This regulation is more general (see comments on following page)

Dept. of Managed Health Care

CCR, Title 28, Div. 1, Chapter 1, Art. 2, Section 1003

[View Document - California Code of Regulations \(westlaw.com\)](#)

This regulation is more general

- The California Air Resources Board (CARB) indicated they have not adopted a regulation limiting public comments. Rather, the board exercises discretion based on the length of the list of commenters. If the list of commenters is long, the Board will limit public comment to one or two minutes. Otherwise, their standard time limit for

public comment is three minutes (double that if an interpreter is used). This is more of a policy approach than a regulatory approach.

- The California Energy Commission (CEC) expressed a similar approach to CARB. Generally, each person has three minutes to make a comment. However, if the list of commenters is long, time for public comment is reduced to one or two minutes per person. The CEC has not adopted regulations specifically limiting public comment and has no plans to do so. This approach is reflective of the very generalized regulation adopted by CEC regarding public comment and seems to be a hybrid of policy and regulation.
- The UC Board of Regents (not subject to the APA) also takes a policy approach (versus regulatory). That said, the policy is very precise and similar to some of the regulations listed above. The board also appears to require that one must register to make a public comment so that the board can determine the limits on public comment in advance. The policy is also specific about not being able to pool or yield time. [Regents Policy 1302: Policy on Public Access to Meetings and Public Comment | Board of Regents \(universityofcalifornia.edu\)](#)
- The California Citizens Redistricting Commission appears to take a policy approach mirroring the language in GC 11125.7(b) but does not adopt a regulation. https://d3n8a8pro7vhmx.cloudfront.net/ccrc/pages/10/attachments/original/1617400154/PIMDC_Agenda_4.14.21_Final_1.pdf?1617400154
- The Office of Administrative Law does not adopt any such regulation regarding public comments. A representative stated that most state adopting agencies do not adopt regulations limiting public comment. However, Bagley-Keene applies to “state bodies” as defined in GC 11121; it is possible that most state adopting agencies don’t fit within this definition and therefore would have no need to adopt regulations limiting public comment.

Bagley Keene link [Codes Display Text \(ca.gov\) GC 11125.7 \(b\), \(c\)\(1\)](#)

Conclusion:

The policies and regulations regarding public comment limitations vary from precise to general. Some agencies specifically limit time for public comment as well as prohibit yielding time to other commenters and pooling time as a group. Some state bodies even require people to register prior to making a public comment/testimony. Other agencies exercise more broad approaches to allow for flexibility depending on specific meeting needs and number of registered commenters.