

Date of Hearing: May 12, 2020

ASSEMBLY COMMITTEE ON GOVERNMENTAL ORGANIZATION

Adam Gray, Chair

AB 2028 (Aguiar-Curry) – As Introduced January 30, 2020

SUBJECT: State agencies: meetings

SUMMARY: Requires relevant documents regarding an agenda item be posted online ten days prior to a public and clarifies the right of the public to comment on agenda items, as specified. Specifically, **this bill**:

- 1) Requires that all writings or materials provided for a noticed meeting to a member of a state body by the staff of a state agency be made available online at least 10 days in advance of a public meeting.
- 2) Provides that this requirement does not apply to writings or materials prepared for a matter to be discussed in a closed session of the state body.
- 3) Deletes a provision allowing a state body to not hear public comment on an agenda item if the item had already been considered by a committee composed exclusively of members of the state body at a public meeting where members of the public were afforded the opportunity to provide public comment, as specified.

EXISTING LAW:

- 1) The Bagley-Keene Open Meeting Act of 1967 (Bagley-Keene Act) generally requires that all meetings of a “state body” be open and public and that all persons be permitted to attend and participate in any meeting of a state body.
- 2) Defines a "state body" as 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 sections 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.

- 3) The Bagley-Keene Act generally requires state bodies to publicly notice their meetings, prepare agendas, accept testimony, and conduct their meetings in public, unless specifically authorized to meet in closed session.

FISCAL EFFECT: Unknown

COMMENTS:

Purpose of the bill: According to the author, “this bill ensures the public has access to all relevant background documents prior to the meeting of a state agency, board or commission. Public access to information is a critical component of our democratic process and encourages informed public engagement with our state leaders. This bill provides the diverse public of our state with a platform to share their opinions and make their voices heard.”

Bagley-Keene Act: When the Legislature enacted the Bagley-Keene Act of 1967 it essentially said that when a body sits down to develop its consensus, there needs to be a seat at the table reserved for the public. In doing so, the Legislature has provided the public with the ability to monitor and be part of the decision-making process. The Bagley-Keene Act explicitly mandates open meetings for California State agencies, boards, and commissions. The Bagley-Keene Act facilitates transparency of government activities and protects the rights of citizens to participate in state government deliberations. Therefore, absent a specific reason to keep the public out of meetings, the public should be allowed to monitor and participate in the decision-making process.

Under Bagley-Keene, a state body must disclose their agenda ten days prior to holding a meeting. Public disclosure of the items to be discussed and acted upon in advance of a meeting allows members of the public adequate time to review the items listed, so they can provide substantive, efficient, and informed comments during the public comment period.

This existing law also requires that a state body must provide an opportunity for members of the public to directly provide comment on each agenda item for discussion or consideration. Although Bagley-Keene requires state agencies, boards, and commissions to post their agendas publically online ten days prior to a meeting, existing law does not include a similar public notice requirement for supporting documents the body will consider relating to an item on the agenda.

Public Comment on Agenda Items: The Bagley-Keene Act does not require the option for public comment on an item, if it was discussed during a prior committee meeting of that body. The author notes that “most committees are comprised of only 2-4 members, meaning that the entire board is often not present for these discussions and the associated public comments. As a result, some board members act on an item without hearing the public’s comment.”

Arguments in support: The California Nurses Association/National Nurses United writes in support, “this bill will close loopholes in the Bagley-Keene Act and provide for greater transparency and disclosure in state public meetings. It is crucial the Legislature act to codify these protections and ensure government transparency. In these uncertain times, it is even more crucial the Legislature act to ensure state agencies, commissions and boards provide crucial transparency when they are not meeting in person.”

Arguments in opposition: The Board of Behavioral Sciences writes in opposition, “the Board recognizes the importance of full public transparency in regard to its meetings, and always strives to do everything possible in order to achieve this. However, it has serious concerns that in some instances, the proposed requirement that all writings or materials be made available online at least 10 days in advance of a meeting for them to be discussed will have a chilling effect on the Board’s ability to take action based on the most recent available information.”

Related Legislation: SB 53 (Wilk) of the 2019-2020 Session. Modifies the definition of "state body" to clarify that standing committees, even if composed of less than three members, are a "state body" for the purposes of the Bagley-Keene Act. (Placed on the Suspense File in the Assembly Committee on Appropriations.)

Prior Legislation: AB 2958 (Quirk) Chapter 881, Statutes of 2018. Provided specified exemptions from Bagley-Keene for advisory state bodies that conduct meetings via teleconference.

SB 984 (Skinner) of the 2017-2018 Legislative Session. Would have required the composition of each appointed state board and commission to have a specified number of women directors, and would have required the office of the governor to collect and release aggregated demographic data provided by state board and commission applicants, nominees, and appointees. (Held in the Assembly Appropriations Committee)

AB 85 (Wilk) of the 2015-2016 Legislative Session. Was substantially similar to SB 53, and would have modified Bagley-Keene to require two-member advisory committees of a “state body” to hold open, public meetings if at least one member of the advisory committee is a member of the larger state body, and the advisory committee is supported, in whole or in part, by state funds. (Vetoed by Governor Brown)

AB 1976 (Irwin) Chapter 451, Statutes of 2016. Created an exemption from the teleconference meeting requirements in Bagley-Keene for agricultural state bodies.

AB 2058 (Wilk) of the 2013- 2014 Legislative Session. Would have modified the definition of “state body,” under Bagley-Keene, to exclude an advisory body with less than three individuals, except for certain standing committees. (Vetoed by Governor Brown)

REGISTERED SUPPORT / OPPOSITION:

Support

California Teachers Association
California Labor Federation
California Federation of Teachers
California Nurses Association/National Nurses United
California School Employees Association

Opposition

Board of Behavioral Sciences

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