

ASSEMBLY COMMITTEE ON APPROPRIATIONS
Lorena Gonzalez, Chair
AB 2028 (Aguiar-Curry) – As Introduced January 30, 2020

Urgency: No State Mandated Local Program: No Reimbursable: No

This bill modifies the Bagley-Keene Open Meeting Act (Bagley-Keene) to require a state body to post online relevant writings and materials at least 10 days in advance of the noticed meeting. This bill also 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.

Potentially significant costs to state agencies for complying with new notice and open meeting requirements. While this bill may apply to a range of state agencies and departments, the Department of Consumer Affairs (DCA) will be the most acutely affected. A range of DCA programs, such as the Board of Behavioral Sciences, will see increased workload and costs related to fast tracking materials to meet the required 10-day deadline. Altogether, additional DCA costs could exceed \$550,000 annually.

- 1) **Open Meeting Acts.** The Government Code contains two parallel open meeting statutes, Bagley-Keene for state government, and the Ralph M. Brown Act (the Brown Act) for local governments. The philosophy underpinning the two acts is that transparency and consensus should be favored over administrative efficiency in most cases. The acts explicitly mandate open meetings for state and local agencies, boards and commissions, and providing the public with the ability to monitor and participate in the decision-making process.

a) A state body must post the meeting's agenda 10 days prior to holding a meeting. There is not a similar requirement for any materials that staff provide members of the state body to advise them on the topics being discussed.

- b) Public comment requirements on any item already considered by a committee of that state body are waived. This waiver applies if (i) the committee is comprised exclusively of members of the state body and (ii) the item being considered was subject to public comment and has not substantially changed.

- 2) **Purpose.** This bill changes the provisions mentioned above to expand Bagley-Keene's public meeting requirements for a state body. First, it requires relevant materials provided to members of the state body to be posted online at least 10 days prior to the meeting, like as is currently required of the agenda. Second, it deletes the provision waiving public comment requirements in specific situations. Supporters note this latter provision was a loophole that allowed many members of a state body to vote on an item without ever hearing public comment.
- 3) **Is this realistic?** The Board of Behavioral Sciences (Board) opposes this bill unless amended. The Board notes this bill will make it difficult to hold meetings and take positions on pending legislation because the proposed requirement that all writings or materials be made available online at least 10 days in advance "will have a chilling effect on the Board's ability to take action based on the most recent available information."

The Board's concerns are reasonable. This bill, as currently drafted, would create a number of logistical and practical problems for state bodies. In the context of a board considering legislative proposals, this bill creates clear conflicts with legislative timelines. The legislative process can move quickly, and the status of any particular bill that is part of a noticed agenda can change dramatically within 10 days of a meeting.

At the same time, there is no reason why a state body cannot post relevant materials online as soon as they are available. It is against the spirit of Bagley-Keene for any state body to "hide the ball" and not make available any relevant materials for a noticed meeting when they are ready. The author may wish to consider amendments that give state bodies some additional flexibility in how they post materials online.

- 4) **Related legislation.** SB 53 (Wilk), of the 2019-2020 Legislation 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 Bagley-Keene. SB 53 was held on this committee's Suspense File.

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