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# SENATE COMMITTEE ON GOVERNMENTAL ORGANIZATION

Senator Bill Dodd

Chair

2019 - 2020 Regular

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<b>Bill No:</b>	AB 2028	<b>Hearing Date:</b>	8/14/2020
<b>Author:</b>	Aguiar-Curry, et al.		
<b>Version:</b>	7/28/2020 Amended		
<b>Urgency:</b>	No	<b>Fiscal:</b>	Yes
<b>Consultant:</b>	Brian Duke		

**SUBJECT:** State agencies: meetings

**DIGEST:** This bill requires state bodies to post all writings or materials provided to a member of the state body on the state agency's internet website the first business day after they are provided to the state agency or at least 48 hours in advance of the meeting, as specified. The bill also removes an exemption in existing law by requiring that a state body make an agenda item that had already been discussed by a committee of the state body open to public comment.

## **ANALYSIS:**

Existing law:

- 1) The Bagley-Keene Open Meeting Act (Bagley-Keene) requires that all meetings of a state body, as defined, be open and public, and that all persons be permitted to attend any meeting of a state body, except as otherwise provided.
- 2) Requires that a state body provide notice of its meeting, including specified information and a specific agenda of the meeting, as provided, to any person who requests that notice in writing and to make that notice available on the internet at least 10 days in advance of the meeting.
- 3) Requires that a state body provide an opportunity for members of the public to directly address the body on each agenda item. Existing law exempts from this requirement, among other things, an agenda item that has 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 an opportunity to address the committee on the item.

4) Defines “state body” to mean 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.

This bill:

- 1) Requires that any notice provided by a state body pursuant to Bagley-Keene to include all writings or materials provided for the noticed meeting to a member of the state body by the staff of a state agency, board, or commission, or another member of the state body, that are in connection with a matter subject to discussion or consideration at the meeting, as specified.
- 2) Requires the writings or materials described above to be made available on the state body’s internet website no later than the first business day following the dissemination of the writings and materials to members of the state body, or at least 48 hours in advance of the meeting, whichever is earlier.
- 3) Requires a state body to make materials provided to members of a state body, including writings and materials provided by another state body, to be made available immediately upon receipt of a written request.
- 4) Requires that any writings or materials provided to the members of a state body by another state body after the time period described above be posted on the state body’s internet website no later than the first business day, but prior to the meeting of the state body, following the dissemination of the writings and materials to the members of the state body.

- 5) A state body that satisfies the above requirements may discuss those writings and materials at an otherwise properly noticed meeting.
- 6) Exempts writings or materials prepared for a matter to be discussed in a closed session of a state body and state financial materials that put the California State Treasurer at a competitive disadvantage in financial transactions from the new posting requirements above.
- 7) Specifies that if the writings or materials described provided to a state body on an agenda for discussion at a meeting of the state bodies are related to legislation that is before the Legislature in a current legislative session or are related to changing financial market conditions, a state body shall satisfy posting requirements by posting on its internet website the writings or materials related to legislation or the changing market conditions as they become available after the time periods described above, and immediately upon receipt of a written request.
- 8) Requires a state body to make clear what date new or changed writings or materials are posted and, when applicable, what changes have been made in the writings or materials.
- 9) Deletes an existing exemption regarding public comment at meetings of a state body, thereby making the requirement to provide an opportunity to address the state body applicable to an agenda item for which the public had an opportunity to address at a public meeting of a committee of the state body.
- 10) Defines “financial materials” to mean documents related to bonds, loans, and grants.
- 11) Includes Legislative findings and declarations.

## Background

*Purpose of the bill.* According to the author’s office, “AB 2028 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 10 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 10 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.

This bill requires state bodies to post on the state body's internet website all writings and materials provided to the state body by staff or another state body that are in connection with a matter subject to discussion or consideration at an open meeting. The writings and materials must be posted online no later than the first business day following the dissemination of the writings and materials to the state body or at least 48 hours in advance of the meeting, whichever is earlier.

The bill exempts writings or materials for matters to be discussed in a closed session, and state financial materials that put the California State Treasurer at a competitive disadvantage in financial transactions.

*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.”

This bill deletes that existing exemption for public comment, thereby making the requirement to provide an opportunity to address a state body applicable to an

agenda item for which the public has already had an opportunity to address at a public meeting of a committee of the state body.

*Web Content Accessibility Guidelines 2.0.* The Web Content Accessibility Guidelines (WCAG) 2.0 covers a wide range of recommendations for making Web content more accessible. The standards are established by the World Wide Web Consortium (W3C), which is an international community that develops open standards with the goal of ensuring the long term growth of the Web.

The W3C states that following these guidelines will make content accessible to a wider range of people with disabilities, including blindness and low vision, deafness and hearing loss, learning disabilities, cognitive limitations, limited movement, speech disabilities, photosensitivity and combinations of these. The W3C also states that these guidelines will often make your Web content more usable to users in general.

*Americans with Disabilities Act of 1990.* The Americans with Disabilities Act (ADA) was enacted by the United States Congress in 1990. The ADA is a wide ranging civil rights law that prohibits discrimination based on disability. It affords similar protections against discrimination to Americans with disabilities as the Civil Rights Act of 1964, which made discrimination based on race, religion, sex, national origin, and other characteristics illegal. In addition, the ADA requires employers to provide reasonable accommodations to employees with disabilities, and imposes accessibility requirements on public accommodations. The ADA disabilities include both mental and physical medical conditions.

*Policy considerations.* State bodies must comply with the ADA and existing state accessibility law when posting information to their internet websites. However, often writings and materials provided to state bodies are not easily converted into an accessible online format. This could lead to state bodies that cannot meet the minimum posting timeline required by this bill to delay scheduled meetings or removed agenda items. For example, the California Board of Psychology does not retain control of its own website and must rely on the capacity of external units to make documents available within minimum turnaround of five days.

Additionally, many commissions are supported by the industry they represent. The California Department of Food and Agriculture (CDFA), oversees 52 active State marketing programs representing over 40 agricultural commodities. Of those 52 programs, 27 are marketing orders and three are marketing agreements operating under the Marketing Act, while 19 are commissions and three are councils operating under individual enabling legislation. Marketing programs are entirely self-supporting. The agricultural industry pays operating costs, including the costs

of government oversight. The state would not backfill any funds needed to comply with the requirements that would be imposed under this bill, which can be costly and time consuming.

**Prior/Related Legislation**

SB 53 (Wilk, 2019) would modify 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. (Held on the Assembly Appropriations Committee Suspense File)

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

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

**FISCAL EFFECT:** Appropriation: No Fiscal Com.: Yes Local: No

**SUPPORT:**

California Nurses Association/National Nurses United (Source)  
Board of Registered Nursing  
California Federation of Teachers, AFT, AFL-CIO  
California Labor Federation  
California School Employees Association, AFL-CIO  
California Taxpayers Association  
California Teachers Association

**OPPOSITION:**

Agricultural Council of California  
California Apple Commission  
California Avocado Commission  
California Blueberry Association  
California Blueberry Commission  
California Board of Psychology  
California Cherry Growers and Industry Association  
California Citrus Mutual  
California Farm Bureau Federation  
California Fresh Fruit Association  
California Grain & Feed Association

California Pear Growers Association  
California Rice Commission  
California Seed Association  
California Strawberry Commission  
California Walnuts  
Olive Growers Council of California  
Olive Oil Commission of California  
Plant California Alliance  
Speech-Language Pathology and Audiology and Hearing Aid Dispensers Board  
Veterinary Medical Board

**ARGUMENTS IN SUPPORT:** The California Nurses Association writes in support of the bill that, “AB 2028 will require documents regarding an agenda item to be posted online 48 hours prior to a public meeting, or when the documents are sent to their board members, whichever is earlier. The bill will allow for documents related to legislation to be updated after the deadline if new information becomes available. AB 2028 will also allow the public to comment on an agenda item at a meeting of a state body, even if that item has been discussed previously in a committee of that state body.”

**ARGUMENTS IN OPPOSITION:** In opposition to the bill, the California Board of Psychology (Board) writes that, “[i]n practice, the bill would severely affect the ability of the Board to conduct its consumer protection mission in a fair and equitable way. The bill does not take into consideration petition hearings in open session that often include documents from the Attorney General or the petitioner within the 48-hour window. This prohibition would affectively deny the ability of the Board to take into consideration crucial exhibits from both parties to make a fair decision on the petitioner’s request for reinstatement or early termination or probation. In effect, the bill would deny the Board – and more importantly California’s consumers – from gaining a fuller picture on steps toward regaining a free and clear license.”

Additionally, the Board argues that, “challenges with the state’s implementation [of] fiscal and accounting systems has meant that information about the Board’s projected budget can change within 24 hours. This year alone, the Board went from a projected reversion of 1.1 percent to a budget deficit within 24 hours. The bill would effectively stop staff from sharing this information with the Board and for the Board to receive complete information to be good stewards of licensing fees.”

Finally, “the Board makes materials available online and ensures that materials are accessible to people with disabilities. The Board works with technology services at the Department of Consumer Affairs to do so. However, the Board does not

retain control of its own website and must rely on the capacity of external units to make documents available within minimum turnaround of five days. The Board immediately transmits any documents receive[d] to technology services so that is accessible and available.”