

# BILL ANALYSIS

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Department, Board, Or Commission	Author	Bill Number
<b>Franchise Tax Board</b>	<b>Eng</b>	<b>AB 1494</b>

## SUBJECT

Public Meetings/Majority Of State Body Members Shall Not Outside Of Meeting Use Series Of Communications To Discuss, Deliberate, Or Take Action On Any Item Within Subject Matter Of State Body

## SUMMARY

This bill would prohibit a majority of members of a state body from using, outside an authorized meeting, a series of communications to discuss, deliberate, or take action on any item of business that is within the subject matter of that state body.

## PURPOSE OF BILL

According to the author, as reflected in legislative analyses, the purpose of this bill is to close a loophole in the Bagley-Keene Act that allows for serial meetings<sup>1</sup>, to legally take place.

## EFFECTIVE/OPERATIVE DATE

This bill would be effective January 1, 2010, and operative as of that date.

## ANALYSIS

### FEDERAL/STATE LAW

Under federal law, the "Sunshine Act" requires that, except for specific exemptions, "every portion of every meeting of an agency shall be open to public observation." Agencies are required to follow a specific procedural process to close or properly open a meeting. An agency must publicly announce the time, place, and subject matter of the open meeting at least one week prior to the meeting date. The agency must submit that information to the *Federal Register* for publication immediately following public announcement.

The Sunshine Act defines "agency" to mean each authority of the United States that is headed by a collegial body composed of two or more individual members, a majority of whom are appointed to such position by the president with the advice and consent of the Senate, and any subdivision thereof authorized to act on behalf of that agency. The act defines "meeting" to mean the deliberations of at least the number of individual agency members required to take action on behalf of the agency where such deliberations determine or result in the joint conduct or disposition of official agency business.

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<sup>1</sup> Serial meetings are defined as direct communication, personal intermediaries, or technological devices used to develop a collective concurrence of a majority of members of a state body.

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Under state law, the Bagley-Keene Open Meeting Act requires all meetings of a state body to be open and public and grants the right to attend such meetings to all persons, with certain exceptions.

A state body conducting a meeting is required to do the following:

- Provide to the public an agenda and specified notice of its public meetings at least ten days in advance of the meeting, and
- Make available to the public, either at the meeting or after the meeting, any public records relating to any agenda item that will be considered at the meeting.

Public records distributed to members of a state body prior to or during a public meeting must be made available for public inspection *at* the meeting. If the writing is prepared by someone other than the governmental body or a member of the governmental body, it must be made available for public inspection upon request without delay *after* the meeting.

Specific to the Franchise Tax Board (FTB), current state law requires that before the three-member Franchise Tax Board (Board) can take a final action on any business item, writings that are prepared and distributed by FTB staff or

- 1) Made available for public inspection at that meeting.
- 2) Distributed to all persons who request notice in writing pursuant to subdivision (a) of Government Code section 11125.
- 3) Made available on the Internet.

### THIS BILL

This bill would repeal existing provisions that prohibit direct communication, personal intermediaries, or technological devices that are employed by a majority of the members of a state body to develop a collective concurrence as to action to be taken on a business item by the members of the state body.

The bill would prohibit a majority of the members of a state body, outside of an authorized meeting, from using a series of communications of any kind, directly or through intermediaries, to discuss, deliberate, or take action on any item of business that is within the subject matter of the state body. The bill's provisions would not prevent an employee or official of a state agency from engaging in separate conversations or communications outside of a meeting with members of a legislative body to answer questions or provide information regarding a matter that is within the subject matter jurisdiction of the state agency, if that person does not communicate the comments or position of any other member or members of the legislative body to members of the legislative body. The bill would clarify that conversations between a member of a state body and any other person are excluded from prohibitions of the Bagley-Keene Open Meeting Act so long as those conversations do not result in a series of conversation to discuss, deliberate, or take action on any item of business that is within the subject matter of the state body.

The bill would make other nonsubstantive technical changes to the Government Code.

## **LEGISLATIVE HISTORY**

SB 519 (Committee on Governmental Organization, Stats. 2007, Ch. 92) amended the Bagley-Keene Act to authorize a state body to hold a special meeting for purposes of appointing an "interim executive officer."

AB 277 (Mountjoy, Stats. 2005, Ch. 288) made permanent certain provisions authorizing closed sessions for purposes of discussing security related issues pertaining to a state body.

AB 780 (Chu, Stats. 2005, Ch. 188) aligned the FTB open meeting procedural requirements with those applicable to the Board of Equalization open meetings.

AB 192 (Canciamilla, Stats. 2001, Ch. 243) made various changes to the Bagley-Keene Act to make it consistent with provisions of the Ralph M. Brown Act.

SB 445 (Burton, Stats. 2001, Ch. 670) requires FTB to distribute certain documents in a specified manner before a final action can be taken at a meeting of the three-member Board.

SB 95 (Ayala, Stats. 1997, Ch. 949) made numerous changes to the Bagley-Keene Act by expanding the notice, disclosure, and reporting requirements for open and closed meetings of state bodies.

## **OTHER STATES' INFORMATION**

A search for similar laws in *Florida, Illinois, Massachusetts, Michigan, Minnesota, and New York* was made. These states were selected due to their similarities to California's economy, business entity types, and tax laws. While these states have similar Open Meeting requirements, the taxing authorities are not governmental boards to which an open meeting act applies; therefore, a meaningful comparison cannot be made.

## **FISCAL IMPACT**

This bill would not impact department costs.

## **ECONOMIC IMPACT**

The provisions of this bill would not impact state income tax revenues.

## **Appointments**

None.

## **Support/Opposition**

Support: According to the Senate Committee on Governmental Organization analysis of June 9, 2009, the following support was noted:

California Newspaper Publishers Association (sponsor)  
American Federation of State, County and Municipal Employees (AFSCME)  
Association of California School Administrators  
California Broadcasters Association  
California School Boards Association

Opposition: According to the Senate Committee on Governmental Organization analysis of June 9, 2009, no opposition is on file.

## **VOTES**

Assembly Floor – Ayes: 73, Noes: 0

Senate Floor – Ayes: 34, Noes: 0

Concurrence – Ayes: 77, Noes: 0

## **LEGISLATIVE STAFF CONTACT**

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