



Bill Analysis

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Sponsor:

Bill Number: AB 2028

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Amended June 4, 2020

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Related Bills: See Legislative
History

SUBJECT

State Agencies/Bagley-Keene Open Meeting Act

SUMMARY

This bill would under, the Government Code (GC), modify provisions of the Bagley-Keene Open Meeting Act (Bagley-Keene Act).

RECOMMENDATION

No position

SUMMARY OF AMENDMENTS

The June 4, 2020, amendments added a coauthor, modified the requirements regarding provision of writings or materials in connection with a noticed meeting under the Bagley-Keene Act, and made a nonsubstantive technical change.

REASON FOR THE BILL

The reason for this bill is to modify the Bagley-Keene Act to enhance the public's access to information and ability to comment on issues concerning the conduct of the people's business.

ANALYSIS

This bill would under the GC, make the following changes to the Bagley-Keene Act:

- Expand the noticing requirement in current law to require that all writings or materials connected with a matter subject to discussion or consideration at a noticed meeting that are provided to a member of a state body by staff of a state agency, board, or commission, or another member of the state body are to be made available on the internet and provided to any person that requests the writings or materials in writing, on the same day that the writings and materials are disseminated to members of the state body, or at least 48 hours in advance of the meeting, whichever is earlier. Failure to meet this requirement would preclude the distribution and discussion of such materials by a state body. Materials and writings related to a closed session matter would be exempt from this requirement.

- Specify that for materials and writings provided in connection with a matter subject to discussion or consideration at a noticed meeting related to legislation pending before the Legislature, a state body is entitled to post online and required to provide upon request, additional materials related to that legislation. Additional time-sensitive information on such legislation that becomes available after the specified deadlines would be required to be provided as soon as it is available. The state body would also be required to make clear the date that new or changed writings or materials are posted as well as what, if any, changes have been made to the previously posted materials.
- Specify that this bill would not provide a state body the authority to remove from its internet website any writings or materials required to be posted in connection with a noticed meeting.
- Eliminate the exception for agenda items that have previously been subject to public comment during a public meeting of a committee of the state body from the general rule that allows the public to comment on each agenda item of a state body. Thus, the public would have the right to comment on each agenda item of a state body, regardless if the agenda item has been previously subject to public comment during a public meeting of a committee of that state body.

The bill would also recast and renumber the existing exceptions to the public's ability to directly address a state body and make several nonsubstantive technical changes.

Effective/Operative Date

Assuming enactment by September 30, 2020, this bill would be effective January 1, 2021, and operative with respect to meetings subject to the Bagley-Keene Act that are scheduled on or after that date.

Federal/State Law

Federal Law

Various federal statutes establish open meeting requirements for federal agencies. Agencies may publish notices of upcoming meetings and hearings in the Federal Register. The Federal Advisory Committee Act, which became law in 1972, applies to government committees that advise the President and executive agencies on specific matters. Most federal agencies are subject to the open meeting provisions of the Government in the Sunshine Act, passed in 1976. This law requires "every portion of every meeting of an agency to be open to public observation." The exemptions to this requirement include matters of national defense, internal agency matters, and matters covered by privacy statutes.

State Law

Under the Bagley-Keene Act, set forth in GC sections 11120-11132, all state boards and commissions have essentially three duties. First, to give timely and sufficient public notice of meetings to be held. Second, to provide an opportunity for public comment. Third, to conduct such meetings in open session, except where a closed session is specifically authorized.

Under current law, unless otherwise excepted, state bodies are required to provide notice at least 10 days in advance of a meeting that includes among other things, a specific agenda for the meeting that briefly describes each item of business for both open and closed sessions.

Current state law, GC section 11125.1 excepts from disclosure under the Bagley-Keene Act certain records including, for example:

- Preliminary drafts, notes, or interagency or intra-agency memoranda that are not retained by the public agency in the ordinary course of business, if the public interest in withholding those records clearly outweighs the public interest in disclosure.
- Records pertaining to pending litigation to which the public agency is a party until such litigation is settled or finally adjudicated.
- Personnel, medical, or similar files, as specified.

Specific to the Franchise Tax Board (FTB), GC section 11125.1 requires, prior to the FTB taking final action on any item, writings that are public records prepared and distributed by the FTB staff or individual members to members of the state body prior to or during a meeting be:

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

Current state law provides an exception from the requirement to allow public comment before the full membership of a state body for an agenda item that has previously been subject to public comment before a meeting of a committee of the state body.

Implementation Considerations

The department has identified the following implementation concerns. Department staff is available to work with the author's office to resolve these and other concerns that may be identified.

It is unclear whether this bill's expanded requirement to disclose or the existing requirements under GC section 11125.1 would be controlling for the FTB.

This bill would require the FTB to provide materials and writings to any person requesting them on the earlier of two dates regardless of when a person's request is received. Thus, a request received by the FTB after the earlier of the two dates had passed would trigger the bill's prohibition on distribution and discussion of those materials by the FTB's Board members. If this is contrary to the author's intent, this bill should be amended.

It is unclear whether the bill language stating that it does not provide authority to remove from its internet website any writings or materials required to be posted in connection with a noticed meeting would be controlling over any existing state laws on document retention and accessibility requirements.

The bill's requirement to provide all notices and writings to a state body's member by staff or another member does not contain an exception for confidential and proprietary materials that could impact the 3-member Franchise Tax Board's ability to effectively discharge its duties.

Technical Considerations

For consistent use of terminology, on page 4, lines 22 and 27, insert "writings or" before "materials".

Policy Concerns

None noted.

Legislative History

AB 2958 (Quirk, Chapter 881, Statutes of 2018) modified the Bagley-Keene Act to authorize members of a state body that is an advisory board, advisory commission, advisory committee, advisory subcommittee, or similar multimember advisory body that has no rule-making authority to attend meetings remotely via teleconference, as specified, provided the meeting complies with all other applicable requirements of the Bagley-Keene Act.

SB 387 (Jackson, Chapter 537, Statutes of 2016), among other things, modified the definition of "state body" for purposes of the Bagley-Keene Act to include the State Bar of California.

AB 2027 (Ting, Chapter 510, Statutes of 2014) requires under the Bagley-Keene Act, a state body to publicly report any action taken and the vote or abstention on that action of each member present for the action.

AB 3035 (Committee on Judiciary, Chapter 300, Statutes of 2002) among other things, amended the 10 day noticing requirement of the Bagley-Keene Act to require that the 10 day notice be made available in appropriate alternative formats, as specified, upon request by any person with a disability, and include information regarding how, to whom, and by when a request for any disability-related accommodation may be made by a person who requires such an accommodation to participate in the public meeting.

PROGRAM BACKGROUND

None noted.

FISCAL IMPACT

If the implementation considerations addressed in this analysis are resolved, the department's costs are expected to be minor.

ECONOMIC IMPACT

Revenue Estimate

This bill, as amended on June 4, 2020, would not impact state income or franchise tax revenue.

This analysis does not account for changes in employment, personal income, or gross state product that could result from this bill or for the net final payment method of accrual.

LEGAL IMPACT

None noted.

APPOINTMENTS

None noted.

SUPPORT/OPPOSITION

To be determined.

ARGUMENTS

To be determined.

LEGISLATIVE STAFF CONTACT

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