



## Bill Analysis

Author: Cooper & Rubio

Sponsor:

Bill Number: AB 29

Analyst: Elaine Warneke

Phone: (916) 845-7746

Introduced: December 7, 2020

Attorney: Shane Hofeling

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

Not applicable.

## 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, modify the current noticing requirement under the Bagley-Keene Act to require that all writings or materials, connected with a matter subject to discussion or consideration at a noticed meeting, 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 state body's internet website, and be 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 72 hours in advance of the meeting, whichever is earlier.

Failure to meet this requirement would preclude the distribution and discussion of such writings or materials by a state body, and the ability to take action on an item to which those writings or materials pertain.

This bill would also make nonsubstantive technical changes.

### *Effective/Operative Date*

This bill would be effective January 1, 2022.

### *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 considerations. Department staff is available to work with the author's office to resolve these and other concerns that may be identified.

As a non-tax bill, the bill would be effective January 1, 2022. For clarity consider amending the bill to provide an operative date, e.g., operative with respect to meetings subject to the Bagley-Keene Act scheduled on or after that date.

It is unclear whether this bill's expanded requirement to disclose under GC section 11125 or the existing requirements under GC section 11125.1 would be controlling for the FTB.

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 (Board) ability to effectively discharge its duties.

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, if a request is received by the FTB after the earlier of the two dates, would the bill trigger the prohibition on the Board members' distribution and discussion of those materials? If this is contrary to the author's intent, this bill should be amended.

This bill would require writings or materials requested in writing to be provided on the same day as the dissemination of the writings and materials to members of the state body or at least 72 hours in advance of the meeting, whichever is earlier. To add clarity and for ease of administration, it is suggested that the bill be amended to remove, "whichever is earlier."

*Technical Considerations*

None noted.

*Policy Considerations*

None noted.

**LEGISLATIVE HISTORY**

AB 2028 (Aguiar-Curry & Gonzalez, 2019/2020) would have modified the noticing and availability of documents and writings requirements under the Bagley-Keene Act to 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. AB 2028 did not pass out of the Senate by the constitutional deadline.

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 introduced December 7, 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 CONTACT**

[FTBLegislativeServices@ftb.ca.gov](mailto:FTBLegislativeServices@ftb.ca.gov)