

CALIFORNIA STATE BOARD OF BEHAVIORAL SCIENCES BILL ANALYSIS

BILL NUMBER: AB 29 **VERSION:** INTRODUCED DECEMBER 7, 2020

AUTHOR: COOPER **SPONSOR:** AUTHOR

RECOMMENDED POSITION: NONE

SUBJECT: STATE BODIES: MEETINGS

Summary:

Current law establishes the Bagley-Keene Open Meeting Act (Bagley-Keene Act) that state bodies, including the Board of Behavioral Sciences (Board) are subject to. This bill proposes a change to the Bagley-Keene Act to require that state bodies provide meeting writings or materials to the public on the same day they are provided the state body's members, or at least 72 hours before the meeting, whichever is earlier.

Existing Law:

1. Establishes the Bagley-Keene Open Meeting Act. It requires the proceedings of public agencies be conducted openly so that the public may remain informed. (Government Code (GC) §11120)
2. Defines "state body" as including state boards, commissions or similar multimember bodies of the state created by statute or required by law to conduct official meetings. It also includes committees that exercise authority of a state body delegated to it by that state body. (GC §11121)
3. Requires a state body to provide a meeting notice to anyone who requests it in writing, and also to post the notice on the internet at least 10 days in advance of a meeting. The notice must contain a specific agenda for the meeting, along with a brief description of the items of business to be transacted or discussed in either open or closed session. (GC §11125)
4. Provides that agendas of public meetings and other writings distributed to the majority of members of a state body in connection with a matter discussed at its public meeting are disclosable public records, unless otherwise exempt by law from public disclosure. (GC §11125.1(a))
5. Provides that writings that are public records that are distributed to members of the state body pertaining to an agenda item prior to or during a meeting must be made available for public inspection at the meeting (if prepared by the state body or one of

its members), or after the meeting (if prepared by some other person). (GC §11125.1(b))

6. Under certain circumstances, permits a state body to take action on items of business not on the posted agenda, including if the state body determines by a two-thirds vote that there is a need to take immediate action and that the need for action came to the state body's attention after the agenda being posted. Notice must be made to all national press wire services. (GC §11125.3(a)(2))
7. Permits a state body to call a special meeting in certain defined circumstances when compliance with the 10-day notice would impose a substantial hardship on the state body or when immediate action is required to protect the public interest. Allowable circumstances include, but are not limited to, to consider pending litigation, to consider proposed legislation, to consider a legal opinion, and to consider license examinations and applications. Notice must be made to all national press wire services. At the commencement of the meeting the body must establish by a 2/3 vote that the delay caused by providing a 10-day notice would have caused a substantial hardship or that immediate action is required to protect the public interest. (GC §11125.4)

This Bill:

1. Requires the required meeting notice posted 10 days in advance of a meeting must also include all writings or materials provided to members of the state body by the staff of a state agency, board or commission, by or another state body member, that are connected to a matter to be discussed or considered at the meeting. These must be posted on the state body's website, and provided to any person who requests them in writing, on the same day they are provided to members of the state body, or at least 72 hours in advance of the meeting, whichever is earlier. (GC §11125(c)(1) and (2))
2. Prohibits a state body from distributing or discussing writings and materials, or taking action on an item to which they pertain, at a meeting of the state body unless the requirements listed above have been met. (GC §11125(c)(3))

Comment:

1) Author's Intent.

The author's office is seeking increase government transparency by ensuring the public has adequate and sufficient time to review meeting materials.

2) Previous Legislation.

This bill is very similar to last year's AB 2028 (Aguilar-Curry). The Board had initially taken an "oppose unless amended" position on AB 2028, due to concerns that it would have made the Board unable to consider the most up-to-date information

available at the time of its meetings, particularly with respect to legislation. AB 2028 was ultimately amended to address this concern, and the Board ended up switching its position to “neutral.” However, AB 2028 ultimately died in the Senate.

3) Impact on Board Operations.

Staff has concerns about the effect this bill would have on two types of meeting materials:

Closed Session Materials

A similar bill that ran last year, AB 2028, exempted closed session materials from its requirements. This bill does not address closed session materials, and therefore, as written, it appears that they would be subject to its requirements.

Legislative Materials

Staff has concerns this bill could have a chilling effect on the Board’s ability to take positions on legislation.

In a typical year, the Board’s staff analyzes between 15 and 20 bills that are identified as affecting Board operations, public protection, and/or its licensees and registrants. These analyses are presented to the Board, which then discusses these bills and determines if there is a need to weigh in, either by taking an official position or by providing technical assistance to the author.

The legislative process moves fast, particularly in the months of March through June, when the Legislature’s policy committees are in full swing and bills are continuously being amended to reflect stakeholder feedback and meet policy committee deadlines. During this time, it is very common for several bills which are on the Board’s agenda to be amended right before the Board meets. When this happens, staff must update the bill analysis as well as the bill version being included in the meeting materials for the discussion to remain relevant. If meeting materials can no longer be updated if there are bill amendments, then the Board cannot discuss and consider the most recent available information, and its voice in the legislative process is silenced.

As cited in Items 6 and 7 of the “Existing Law” section above, the Bagley-Keene Act provides state bodies with a process to take action on items not on the posted agenda or call a special meeting, if there is an “immediate need” and there is a 2/3 vote in agreement about this, or for a special meeting if compliance with the 10-day requirement would impose a “substantial hardship” or when “immediate action” is required to protect the public interest. However, there is a high threshold to meet these requirements, including a 2/3 vote and notification of the press on a national level. When coupled with the high costs of calling a special board meeting (for materials, webcasting, staff time etc.), in many cases calling a special meeting would not be feasible.

4) Suggested Amendments.

Staff recommends that the Board request two amendments, similar to what was previously included in AB 2028:

- An amendment stating that the requirement does not apply to writings/materials prepared for a matter to be discussed in a closed session of the state body; and
- An amendment stating that if the writings/materials on an agenda for discussion are related to current legislation, the state body can satisfy the posting requirements by posting these writings/materials as they become available after the ordinarily prescribed time periods

5) Support and Opposition.

Support:

- California Sportsman's Lobby
- Outdoor Sportsmen's Coalition of California
- Safari Club International – California Chapters

Opposition:

- None at this time.

6) History.

2021

01/11/21 Referred to Com. on G.O.

12/08/20 From printer. May be heard in committee January 7.

12/07/20 Read first time. To print.

**Introduced by Assembly Member Cooper
(Coauthor: Assembly Member Blanca Rubio)**

December 7, 2020

An act to amend Section 11125 of the Government Code, relating to public meetings.

legislative counsel's digest

AB 29, as introduced, Cooper. State bodies: meetings.

Existing law, the Bagley-Keene Open Meeting Act, 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 in that act. Existing law requires the state body to 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.

This bill would require that notice 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. The bill would require those writings or materials to be made available on the state body's internet website, and to any person who requests the writings or materials in writing, 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. The bill would prohibit a state body from discussing those writings or materials, or from taking action on an item to which

those writings or materials pertain, at a meeting of the state body unless the state body has complied with these provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 11125 of the Government Code is
2 amended to read:

3 11125. (a) The state body shall provide notice of its meeting
4 to any person who requests that notice in writing. Notice shall be
5 given and also made available on the ~~Internet~~ *state body's internet*
6 *website* at least 10 days in advance of the ~~meeting~~, *meeting* and
7 shall include the name, address, and telephone number of any
8 person who can provide further information ~~prior to~~ *before* the
9 ~~meeting~~, *meeting* but need not include a list of witnesses expected
10 to appear at the meeting. The written notice shall additionally
11 include the address of the ~~Internet site~~ *internet website* where
12 notices required by this article are made available.

13 (b) The notice of a meeting of a body that is a state body shall
14 include a specific agenda for the meeting, containing a brief
15 description of the items of business to be transacted or discussed
16 in either open or closed session. A brief general description of an
17 item generally need not exceed 20 words. A description of an item
18 to be transacted or discussed in closed session shall include a
19 citation of the specific statutory authority under which a closed
20 session is being held. No item shall be added to the agenda
21 subsequent to the provision of this notice, unless otherwise
22 permitted by this article.

23 (c) (1) *A notice provided pursuant to subdivision (a) shall*
24 *include all writings or materials provided for the noticed meeting*
25 *to a member of the state body by the staff of a state agency, board,*
26 *or commission, or another member of the state body that are in*
27 *connection with a matter subject to discussion or consideration*
28 *at the meeting.*

29 (2) *The writings or materials described in paragraph (1) shall*
30 *be made available on the state body's internet website, and to any*
31 *person who requests the writings or materials in writing, on the*
32 *same day as the dissemination of the writings and materials to*

1 *members of the state body or at least 72 hours in advance of the*
2 *meeting, whichever is earlier.*

3 *(3) A state body may not distribute or discuss writings or*
4 *materials described in paragraph (1), or take action on an item*
5 *to which those writings or materials pertain, at a meeting of the*
6 *state body unless the state body has complied with this subdivision.*

7 ~~(e)~~

8 *(d) Notice of a meeting of a state body that complies with this*
9 *section shall also constitute notice of a meeting of an advisory*
10 *body of that state body, provided that the business to be discussed*
11 *by the advisory body is covered by the notice of the meeting of*
12 *the state body, provided that the specific time and place of the*
13 *advisory body's meeting is announced during the open and public*
14 *state body's meeting, and provided that the advisory body's*
15 *meeting is conducted within a reasonable time of, and nearby, the*
16 *meeting of the state body.*

17 ~~(d)~~

18 *(e) A person may request, and shall be provided, notice pursuant*
19 *to subdivision (a) for all meetings of a state body or for a specific*
20 *meeting or meetings. In addition, at the state body's discretion, a*
21 *person may request, and may be provided, notice of only those*
22 *meetings of a state body at which a particular subject or subjects*
23 *specified in the request will be discussed.*

24 ~~(e)~~

25 *(f) A request for notice of more than one meeting of a state body*
26 *shall be subject to the provisions of Section 14911.*

27 ~~(f)~~

28 *(g) The notice shall be made available in appropriate alternative*
29 *formats, as required by Section 202 of the Americans with*
30 *Disabilities Act of 1990 (42 U.S.C. Sec. 12132), and the federal*
31 *rules and regulations adopted in implementation thereof, upon*
32 *request by any person with a disability. The notice shall include*
33 *information regarding how, to whom, and by when a request for*
34 *any disability-related modification or accommodation, including*
35 *auxiliary aids or services may be made by a person with a disability*
36 *who requires these aids or services in order to participate in the*
37 *public meeting.*

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