

SENATE RULES COMMITTEE

AB 2058

Office of Senate Floor Analyses
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THIRD READING

Bill No: AB 2058
Author: Wilk (R), et al.
Amended: 6/19/14 in Senate
Vote: 27 - Urgency

SENATE GOVERNMENTAL ORGANIZATION COMMITTEE: 8-0, 6/10/14
AYES: Correa, Cannella, De León, Galgiani, Hernandez, Padilla, Torres, Vidak
NO VOTE RECORDED: Berryhill, Lieu, Vacancy

SENATE APPROPRIATIONS COMMITTEE: 6-0, 6/30/14
AYES: De León, Walters, Hill, Lara, Padilla, Steinberg
NO VOTE RECORDED: Gaines

ASSEMBLY FLOOR: 77-0, 5/27/14 - See last page for vote

SUBJECT: Open meetings

SOURCE: Author

DIGEST: This bill modifies the definition of “state body” to exclude an advisory body with less than three individuals, except for certain standing committees, as specified.

ANALYSIS: The Bagley-Keene Open Meeting Act covers all state boards and commissions and generally requires these bodies to publicly notice their meetings, prepare agendas, accept public testimony and conduct their meetings in public unless specifically authorized by the Act to meet in closed session. The Ralph M. Brown Act governs meetings of legislative bodies of local agencies. In general, both Acts are virtually identical. While both Acts contain specific exceptions from the open meeting requirements where government has demonstrated a need for confidentiality, such exceptions have been narrowly construed by the courts.

CONTINUED

The Bagley-Keene Act defines “state body” to mean each of the following:

1. 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.
2. A board, commission, committee, or similar multimember body that exercises any authority of a state body delegated to it by that state body.
3. 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. Advisory bodies created to consist of fewer than three individuals are not a state body, except that standing committees of a state body, irrespective of their composition, which have a continuing subject matter jurisdiction, or a meeting schedule fixed by resolution, policies, bylaws, or formal action of a state body are state bodies for the purposes of this chapter.
4. A board, commission, committee, or similar multimember body on which a member of a body that is a state body serves in his/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 modifies the definition of “state body” to exclude an advisory body with less than three individuals, except that a standing committee of a state body, regardless of its composition, which has a continuing subject matter jurisdiction or a meeting schedule fixed by resolution, policies, bylaws, or formal action of a state body is a state body for purposes of the Bagley-Keene Act Open Meeting Act.

Background

When the Legislature enacted the Bagley-Keene Act, it essentially said that when a state body sits down to develop its consensus, there needs to be a seat at the table reserved for the public. By reserving this place for the public, the Legislature has provided the public with the ability to monitor and participate in the decision-making process. If the body were permitted to meet in secret, the public’s role in the decision-making process would be negated. Therefore, absent a specific reason to keep the public out of the meeting, the public should be allowed to monitor and participate in the decision-making process.

CONTINUED

Comments

According to the author's office, the current definition of "state body" in the Bagley-Keene Act contains an ambiguity with respect to whether a "standing committee" composed of fewer than three members needs to comply with the public notice and open meeting requirements of the Act. The author's office argues that certain state bodies (e.g., High Speed Rail Authority, First 5 California, and the Veterinary Medical Board) have allowed standing committees to hold closed door meetings as long as they contain two rather than three members and do not vote to take action on items. The author's office believes such entities are intentionally limiting membership on standing committees to no more than two members for the explicit purpose of avoiding open meeting requirements.

The author's office states that prior to 1993, the Brown Act contained language very similar to the current language in the Bagley-Keene Act relative to standing committees. However, in the 1990s when a local government entity attempted to claim a loophole existed for two-member standing committees, the Legislature promptly removed any ambiguity on the matter from the Brown Act (SB 1140, Calderon, Chapter 1138, Statutes of 1993). A conforming change was not made, however, to the Bagley-Keene Act, as no change was thought necessary.

The author's office emphasizes that the ambiguity left in the Bagley-Keene Act is allowing state bodies to deliberate and direct staff behind closed doors. These state agencies are allowing standing committees to interpret the language of the Bagley-Keene Act in a manner that is contrary to the intent of the Legislature and the public.

The author's office states that this bill is simply intended to clarify that all standing committees, including advisory committees, are subject to the transparency of open meeting regulations regardless of committee size or membership.

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

According to the Senate Appropriations Committee, in general, this bill imposes minor to moderate costs on affected state entities. Some state entities may simply decide to eliminate certain advisory bodies and specified standing committees rather than spend limited resources for compliance with open meeting requirements.

The following regulatory entities within the Department of Consumer Affairs that use advisory committees of less than three members reported costs to comply with open meeting requirements, including costs for board member and staff travel, communications, and providing public meeting space:

- Physician Assistant Board: \$13,614 (Physician Assistant Fund)
- Dental Board: \$20,421 (State Dentistry Fund)
- Dental Hygiene Committee: \$15,833 (State Dental Hygiene Fund)
- Naturopathic Medicine Committee: \$11,214 (Naturopathic Doctor's Fund)
- Board of Registered Nursing: \$27,628 (Board of Registered Nursing Fund)
- Board of Accountancy: \$89,556 (Accountancy Fund)
- Board of Veterinary Medicine: \$6,807 (Veterinary Medical Board Contingency Fund)
- Board of Pharmacy: \$9,345 (Pharmacy Board Contingency Fund)
- State Athletic Commission: \$124,795 (Athletic Commission Fund)
- Osteopathic Medical Board: projected costs of \$81,864, based on historical use of advisory bodies, if advisory bodies are formed in the future. (Osteopathic Medical Board Contingency Fund)

SUPPORT: (Verified 7/1/14)

Board of Behavioral Sciences

OPPOSITION: (Verified 7/1/14)

California Board of Accountancy

ARGUMENTS IN SUPPORT: The Board of Behavioral Sciences writes, “This bill would make an advisory body consisting of less than three members subject to the Bagley-Keene Open Meeting Act if the body is a standing committee with a continuing subject matter jurisdiction, or has a meeting schedule fixed by formal action of a state body.”

ARGUMENTS IN OPPOSITION: The California Board of Accountancy (CBA) states that this bill appears to exclude even a single member from acting in an advisory body capacity without public notice. According to the CBA, this bill prevents the CBA and its various committees from asking fewer than three members to draft a letter, provide expert analysis, or work on legal language without giving public notice. Under existing law, the advisory activities of the CBA's one or two-member committees are vetted and voted upon in a publically noticed meeting of the whole committee board.

CONTINUED

ASSEMBLY FLOOR: 77-0, 5/27/14

AYES: Achadjian, Alejo, Allen, Ammiano, Bigelow, Bloom, Bocanegra, Bonilla, Bonta, Bradford, Brown, Buchanan, Ian Calderon, Campos, Chau, Chávez, Chesbro, Conway, Cooley, Dababneh, Dahle, Daly, Dickinson, Donnelly, Eggman, Fong, Fox, Frazier, Beth Gaines, Garcia, Gatto, Gomez, Gonzalez, Gordon, Gorell, Gray, Grove, Hagman, Hall, Harkey, Roger Hernández, Holden, Jones, Jones-Sawyer, Levine, Linder, Logue, Lowenthal, Maienschein, Mansoor, Medina, Melendez, Mullin, Muratsuchi, Nazarian, Nestande, Olsen, Pan, Perea, John A. Pérez, V. Manuel Pérez, Quirk, Rendon, Ridley-Thomas, Rodriguez, Salas, Skinner, Stone, Ting, Wagner, Waldron, Weber, Wieckowski, Wilk, Williams, Yamada, Atkins

NO VOTE RECORDED: Patterson, Quirk-Silva, Vacancy

MW:k 7/1/14 Senate Floor Analyses

SUPPORT/OPPOSITION: SEE ABOVE

**** **END** ****



AB-2058 Open meetings. (2013-2014)

AMENDED IN SENATE JUNE 19, 2014

AMENDED IN ASSEMBLY APRIL 09, 2014

CALIFORNIA LEGISLATURE— 2013–2014 REGULAR SESSION

ASSEMBLY BILL

No. 2058

Introduced by Assembly Member Wilk

(Coauthors: Assembly Members ~~Hagman and Harkey~~ Hagman, Harkey, and Olsen)

(Coauthors: Senators DeSaulnier, Gaines, and Vidak)

February 20, 2014

An act to amend Section 11121 of the Government Code, relating to state government, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

AB 2058, as amended, Wilk. Open meetings.

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 and participate in any meeting of a state body, subject to certain conditions and exceptions.

This bill would modify the definition of "state body" to exclude an advisory body with less than 3 individuals, except for certain standing committees.

This bill would declare that it is to take effect immediately as an urgency statute.

Vote: 2/3 Appropriation: no Fiscal Committee: yes Local Program: no

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 11121 of the Government Code is amended to read:

11121. As used in this article, "state body" means 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. An advisory body created to consist of fewer than three individuals is not a state body, except that a standing committee of a state body, irrespective of its composition, which has a continuing subject matter jurisdiction, or a meeting schedule fixed by resolution, policies, bylaws, or formal action of a state body is a state body for the purposes of this chapter.

(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~~ *that* state body, whether the multimember body is organized and operated by the state body or ~~by~~ a private corporation.

SEC. 2. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to avoid unnecessary litigation and ensure the people's right to access of the meetings of public bodies pursuant to Section 3 of Article 1 of the California Constitution, it is necessary that act take effect immediately.