STATE OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS

BUSINESS, CONSUMER SERVICES, AND HOUSING AGENCY • GOVERNOR EDMUND G. BROWN JR.

BOARD OF PSYCHOLOGY – Administration
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MEMORANDUM

DATE	July 30, 2015
TO	Board of Psychology Members
FROM	Jonathan Burke Administrative Services Coordinator
SUBJECT	**AB 85 (Wilk) – Open Meetings**

Background:

Please see attached analysis for detail on the proposed legislation.

Action Requested:

The staff recommendation is to continue to "Oppose" AB 85 (Wilk).

Attachment A is the staff analysis of AB 85.
Attachment B is the language of the bill.
Attachment C is the "oppose" letter for AB 85.

CALIFORNIA STATE BOARD OF PSYCHOLOGY

BILL ANALYSIS

BILL NUMBER: AB 85 **VERSION:** AMENDED APRIL 15, 2015

AUTHOR: WILK **SPONSOR:** AUTHOR

RECOMMENDED POSITION: OPPOSE

SUBJECT: OPEN MEETINGS

Overview:

This bill would make an advisory body consisting of less than three members subject to the Bagley-Keene Open Meeting Act if a member of the state body is serving on it in his or her official capacity, and if the advisory body is supported, wholly or partially, by funds from the state body.

Existing Law:

1) Establishes the Bagley-Keene Open Meeting Act, which requires that actions and deliberations of state agencies be conducted openly. (Government Code (GC) §11120)

2) Defines a "state body" to mean any of the following (GC §11121):

   - A state board, commission, or multimember body of the state created by statute to conduct official meetings.

   - A board, commission or committee that exercises authority of a state body delegated by that state body.

   - An advisory board, commission, committee, or subcommittee that consists of three or more persons and is created by formal action by the state body or any of its members.

   - A board, commission, or committee on which a member of a state body serves in official capacity as a representative.

3) Requires that all meetings of a state body be open and all members of the public permitted to attend. (GC §11123)

4) Requires a state body to provide notice at least 10 days prior to a meeting, which includes an agenda for that meeting. (GC §11125)

This Bill:

1) Revises the definition of a state body subject to the Bagley-Keene Open Meeting Act. Under the proposed change, an advisory body consisting of less than three members would be subject to Bagley-Keene if a member is serving in his or her official capacity and if the advisory body is supported, wholly or partially, by funds from the state body. (GC §11121)

Comment:

1) **Author's Intent.** Current law allows standing committees of a state entity to hold meetings that are not subject to the Bagley-Keene Open Meeting Act if they contain fewer than three members and do not vote to take action on items of discussion. The author's office is concerned that some state agencies are conducting meetings with two or fewer members specifically to avoid open meeting requirements. The author notes it is the intent of the Legislature and the public for government to conduct its business visibly and transparently.

2) **Brown Act for Local Governments.** Local government entities must abide by the Brown Act, which is an open meeting act similar to Bagley-Keene. In the early 1990s, the Brown Act contained a similar allowance as Bagley-Keene. This was corrected as soon as the Legislature discovered it; however, a conforming change was not made to the Bagley-Keene Act at that time.

3) **Current Board Process.** The Board commonly utilizes two-member standing committees to address issues requiring in-depth discussion and analysis. The intent is to create an environment that encourages discussion and sharing of ideas between Board members, staff, and interested stakeholders, which may eventually be used to generate a legislative or regulatory proposal. No votes are taken at these meetings; any action must be approved by the full Board at a board meeting.

   The ad hoc Enforcement Committee and the Telepsychology Committee are examples of recent two-member standing committees.

   If this bill were to become law, additional staff time and resources would be required to complete meeting minutes, notice the meetings, and generate materials for interested parties.

   Additionally, sometimes boards form two-member executive committee meetings to handle matters such as personnel issues, or to review applications when hiring an executive officer. This bill would require these types of meetings to be noticed and subject to the requirements of Bagley-Keene.

4) **Board Members Serving on Other Multimember Bodies.** The amendments in this bill would mean that a board member acting in official capacity on <u>any</u> multimember body (e.g. ASPPB), whether a state body or corporate body, would subject that body to the Bagley-Keene Act if that board member receives state funds. In such a case, the Board must post notice of and an agenda for a meeting that it is not hosting. The cost and compliance issues that this would create may act as a disincentive for Board members to represent the Board at other meetings and events.

5) **Impact on Board Processes.** This bill would prevent the Board, and all of its various committees, from asking fewer than three members to review a document, draft a letter, provide expert analysis, or work on legal language without giving public notice. Under current law, the advisory activities of these two-member bodies are already vetted and voted upon in a publically noticed meeting of the whole committee or board.

6) **Fiscal Impact:** In addition, making advisory activities of two members open to the public will increase costs, as a staff member would need to travel to attend the meeting for the purpose of recording minutes. The production of notices and meeting materials would also place an increased burden on staff time and resources. The Board has identified a part time Program Technician II position to absorb the workload produced by this bill.

7) **Urgency Statute.** This bill is an urgency statute. Therefore, if signed by the Governor, it would become effective immediately.

8) **Previous Legislation.** AB 2058 (Wilk, 2014) proposed making an advisory body consisting of less than three members subject to the Bagley-Keene Open Meeting Act if the body was a standing committee with a continuing subject matter jurisdiction or a had a meeting schedule fixed by formal action of a state body.

   The Board did not adopt a position on AB 2058.

   However, AB 2058 was vetoed by the Governor, who stated the following in his veto message:

   "... Any meeting involving formal action by a state body should be open to the public. An advisory committee, however, does not have authority to act on its own and must present any findings and recommendations to a larger body in a public setting for formal action. That should be sufficient."

9) **BreEZe Impact:** N/A

10) **Support and Opposition.**
   Support:
   California Association of Licensed Investigators

   Opposition:
   California Board of Psychology
   Board of Behavioral Sciences
   Board of Professional Engineers, Land Surveyors, and Geologists
   California Board of Accountancy
   California Acupuncture Board
   California Board of Vocational Nursing and Psychiatric Technicians
   California State Board of Pharmacy
   Dental Board of California
   Dental Hygiene Committee of California
   Physician Assistant Board of the Medical Board of California

11) **History**

   2015
   07/14/15 From committee: Do pass and re-refer to Com. on APPR. (Ayes 13. Noes 0.) (July 14). Re-referred to Com. on APPR.
   06/11/15 Referred to Com. on G.O.
   06/01/15 In Senate. Read first time. To Com. on RLS. for assignment.
   06/01/15 Read third time. Urgency clause adopted. Passed. Ordered to the Senate.
   05/28/15 Read second time. Ordered to third reading.
   05/28/15 From committee: Do pass. (Ayes 17. Noes 0.) (May 28).
   04/22/15 In committee: Set, first hearing. Referred to APPR. Suspense file.
   04/16/15 Re-referred to Com. on APPR.
   04/15/15 Read second time and amended.
   04/14/15 From committee: Amend, and do pass as amended and re-refer to Com. on APPR. (Ayes 21. Noes 0.) (April 8).
   01/26/15 Referred to Com. on G.O.

01/07/15 From printer. May be heard in committee February 6.
01/06/15 Read first time. To print.

AB-85 Open meetings. (2015-2016)

AMENDED IN ASSEMBLY APRIL 15, 2015

CALIFORNIA LEGISLATURE— 2015–2016 REGULAR SESSION

ASSEMBLY BILL **No. 85**

Introduced by Assembly Member Wilk

January 06, 2015

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 85, 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 a meeting of a state body, subject to certain conditions and exceptions.

This bill would specify that the definition of "state body" includes an advisory board, advisory commission, advisory committee, advisory subcommittee, or similar multimember advisory body of a state body that consists of 3 or more individuals, as prescribed, except a board, commission, committee, or similar multimember body on which a member of a body 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 state body, whether the multimember body is organized and operated by the state body or by a private corporation.

~~This bill would make legislative findings and declarations, including, but not limited to, a statement of the Legislature's intent that this bill is declaratory of existing law.~~

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.The Legislature finds and declares all of the following:~~

~~(a)The unpublished decision of the Third District Court of Appeals in Funeral Security Plans v. State Board of Funeral Directors (1994) 28 Cal. App.4th 1470 is an accurate reflection of legislative intent with respect to the applicability of the Bagley-Keene Open Meeting Act (Article 9 (commencing with Section 11120) of Chapter 1 of~~

~~Part 1 of Division 3 of Title 2 of the Government Code) to a two-member standing advisory committee of a state body.~~

~~(b)A two-member committee of a state body, even if operating solely in an advisory capacity, already is a "state body," as defined in subdivision (d) of Section 11121 of the Government Code, if a member of the state body sits on the committee and the committee receives funds from the state body.~~

~~(c)It is the intent of the Legislature that this bill is declaratory of existing law.~~

~~**SEC. 2.**~~***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, and if the advisory body so created consists of three or more persons, except as in subdivision (d).

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

~~**SEC. 3.**~~***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 the meetings of public bodies pursuant to Section 3 of Article 1 of the California Constitution, it is necessary that *this* act take effect ~~immediately~~ *immediately*.

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May 21, 2015

The Honorable Scott Wilk
California State Assembly
State Capitol, Room 4158
Sacramento, CA 95814

RE: **AB 85 (WILK) – OPEN MEETINGS**
OPPOSE

Dear Assemblymember Wilk:

The California Board of Psychology (Board) **OPPOSES AB 85**, which would require two-member advisory committees or panels of a "state body" (as defined in the Bagley-Keene Open Meeting Act) to hold open, public meetings if at least one member of the advisory committee is a member of the larger state body and the advisory committee is supported, in whole or in part, by state funds.

The Board commonly utilizes two-member committees to address issues requiring in-depth discussion and analysis. The intent is to create an environment that encourages discussion and sharing of ideas between Board members, staff, and interested stakeholders, which may eventually be used to generate a legislative or regulatory proposal.

This bill would prevent the Board and all of its various committees, from asking fewer than three members to review a document, draft a letter, provide expert analysis, or work on legal language without giving public notice. Under current law, the advisory activities of these two-member bodies are already vetted and voted upon in a publically noticed meeting of the whole committee or Board.

Additionally, boards form two-member executive committee meetings to handle matters such as personnel issues, or to review applications when hiring an executive officer. This bill would require these types of meetings to be noticed and subject to the requirements of the Bagley-Keene Act.

The Board's mission is to advance quality psychological services for Californians by ensuring ethical and legal practice and supporting the evolution of the profession.

If you have any questions or concerns, please feel free to contact the Board's Executive Officer, Antonette Sorrick, at (916) 574-7113. Thank you.

Sincerely,

MICHAEL ERICKSON, PH.D.
President, Board of Psychology