



MEMORANDUM

DATE	April 16, 2015
TO	Policy and Advocacy Committee 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 oppose AB 85 (Wilk).

Attachment A is the staff analysis of AB 85.

Attachment B is the language of the bill.

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 any 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) **BreZE Impact:** N/A

10) Support and Opposition.

Support:

California Association of Licensed Investigators

Opposition:

California Board of Accountancy

11) History

2015

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.

AMENDED IN ASSEMBLY APRIL 15, 2015

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 85

Introduced by Assembly Member Wilk

January 6, 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: $\frac{2}{3}$. Appropriation: no. Fiscal committee: yes.
 State-mandated local program: no.

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

1 ~~SECTION 1. The Legislature finds and declares all of the~~
 2 ~~following:~~

3 ~~(a) The unpublished decision of the Third District Court of~~
 4 ~~Appeals in Funeral Security Plans v. State Board of Funeral~~
 5 ~~Directors (1994) 28 Cal. App.4th 1470 is an accurate reflection of~~
 6 ~~legislative intent with respect to the applicability of the~~
 7 ~~Bagley-Keene Open Meeting Act (Article 9 (commencing with~~
 8 ~~Section 11120) of Chapter 1 of Part 1 of Division 3 of Title 2 of~~
 9 ~~the Government Code) to a two-member standing advisory~~
 10 ~~committee of a state body.~~

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

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

18 ~~SEC. 2.~~

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

21 11121. As used in this article, “state body” means each of the
 22 ~~following:~~

23 ~~(a) Every state board, or commission, or similar multimember~~
 24 ~~body of the state that is created by statute or required by law to~~
 25 ~~conduct official meetings and every commission created by~~
 26 ~~executive order.~~

27 ~~(b) A board, commission, committee, or similar multimember~~
 28 ~~body that exercises any authority of a state body delegated to it by~~
 29 ~~that state body.~~

30 ~~(c) An advisory board, advisory commission, advisory~~
 31 ~~committee, advisory subcommittee, or similar multimember~~
 32 ~~advisory body of a state body, if created by formal action of the~~
 33 ~~state body or of any member of the state body, and if the advisory~~

1 body so created consists of three or more persons, except as in
2 subdivision (d).

3 (d) A board, commission, committee, or similar multimember
4 body on which a member of a body that is a state body pursuant
5 to this section serves in his or her official capacity as a
6 representative of that state body and that is supported, in whole or
7 in part, by funds provided by the state body, whether the
8 multimember body is organized and operated by the state body or
9 by a private corporation.

10 ~~SEC. 3.~~

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

15 In order to avoid unnecessary litigation and ensure the people's
16 right to access the meetings of public bodies pursuant to Section
17 3 of Article 1 of the California Constitution, it is necessary that
18 *this act take effect ~~immediately~~ immediately.*