

AMENDED IN ASSEMBLY APRIL 9, 2014

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 2058

Introduced by Assembly Member Wilk
(Coauthors: Assembly Members Hagman and Harkey)
(Coauthor: Senator DeSaulnier)
(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 also make legislative findings and declarations in this regard.~~

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3 ~~(a) The unpublished decision of the Third District Court of~~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) (Bagley-Keene Act) to a two-member~~
 10 ~~standing advisory committee of a state body. A two-member~~
 11 ~~standing committee of a state body, even if operating solely in an~~
 12 ~~advisory capacity, already is a “state body,” as defined in~~
 13 ~~subdivision (d) of Section 11121 of the Government Code,~~
 14 ~~irrespective of its size, if a member of the state body sits on the~~
 15 ~~committee and the committee receives funds from the state body.~~
 16 ~~For this type of two-member standing advisory committee, this~~
 17 ~~bill is declaratory of existing law.~~

18 ~~(b) A two-member standing committee of a state body, even if~~
 19 ~~operating solely in an advisory capacity, already is a “state body,”~~
 20 ~~as defined in subdivision (b) of Section 11121 of the Government~~
 21 ~~Code, irrespective of its composition, if it exercises any authority~~
 22 ~~of a state body delegated to it by that state body. For this type of~~
 23 ~~two-member standing advisory committee, this bill is declaratory~~
 24 ~~of existing law.~~

25 ~~(c) All two-member standing advisory committees of a local~~
 26 ~~body are subject to open meeting requirements under the Ralph~~
 27 ~~M. Brown Act (Chapter 9 (commencing with Section 54950) of~~
 28 ~~Part 1 of Division 2 of Title 5 of the Government Code) (Brown~~
 29 ~~Act). It is the intent of the Legislature in this act to reconcile~~
 30 ~~language in the Brown Act and Bagley-Keene Act with respect to~~
 31 ~~all two-member standing advisory committees, including, but not~~
 32 ~~limited to, those described in subdivisions (a) and (b).~~

33 ~~SEC. 2.~~

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

36 11121. As used in this article, “state body” means each of the
 37 following:

38 (a) Every state board, or commission, or similar multimember
 39 body of the state that is created by statute or required by law to

1 conduct official meetings and every commission created by
2 executive order.

3 (b) A board, commission, committee, or similar multimember
4 body that exercises any authority of a state body delegated to it by
5 that state body.

6 (c) An advisory board, advisory commission, advisory
7 committee, advisory subcommittee, or similar multimember
8 advisory body of a state body, if created by formal action of the
9 state body or of any member of the state body. ~~Advisory bodies~~
10 *An advisory body* created to consist of fewer than three individuals
11 ~~are~~ *is* not a state body, except that ~~a standing committees~~ *committee*
12 of a state body, irrespective of ~~their~~ *its* composition, which ~~have~~
13 *has* a continuing subject matter jurisdiction, or a meeting schedule
14 fixed by resolution, policies, bylaws, or formal action of a state
15 body ~~are~~ *is* a state ~~bodies~~ *body* for the purposes of this chapter.

16 (d) A board, commission, committee, or similar multimember
17 body on which a member of a body that is a state body pursuant
18 to this section serves in his or her official capacity as a
19 representative of that state body and that is supported, in whole or
20 in part, by funds provided by the state body, whether the
21 multimember body is organized and operated by the state body or
22 by a private corporation.

23 ~~SEC. 3.~~

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

28 In order to avoid unnecessary litigation and ensure the people's
29 right to access of the meetings of public bodies pursuant to Section
30 3 of Article 1 of the California Constitution, it is necessary that
31 act take effect immediately.

Assembly California Legislature



SCOTT WILK ASSEMBLYMAN, THIRTY-EIGHTH DISTRICT AB 2058 – Fact Sheet

Background

Current law requires all standing committees of a local government entity or of the Legislature to hold meetings that are open to the public whether or not the standing committee takes action. However, existing law is slightly ambiguous for state bodies, which some state agencies are using as a loophole. The California High Speed Rail Authority, First 5 California, and the California Veterinary Medical Board have all exploited this interpretation that standing committees can hold closed door meetings as long as they contain two rather than three members and do not vote to take action on items. These agencies thus limit their standing committees to no more than two members for the explicit purpose of avoiding open meeting requirements.

Government Code contains two parallel open meeting statutes: the Brown Act for local governments and the Bagley-Keene Act for state government. Prior to 1993, the Brown Act contained language very similar to the current language in the Bagley-Keene Act regarding standing committees. However, in the 90's 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 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 government at all levels must conduct its business visibly and transparently.

This Bill

- This bill aligns the definitions in the Bagley-Keene Act to those in the Brown Act, making the clarifying change in the Bagley-Keene Act that the Legislature made to the Brown Act in 1993.
- AB 2058 will make it definite that all standing committees are subject to the transparency of open meeting regulations, regardless of the size of its membership.

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