

AMENDED IN ASSEMBLY JUNE 4, 2020

CALIFORNIA LEGISLATURE—2019–20 REGULAR SESSION

ASSEMBLY BILL

No. 2028

Introduced by Assembly Member Aguiar-Curry
(Coauthor: Assembly Member Gonzalez)

January 30, 2020

An act to amend Sections 11125 and 11125.7 of the Government Code, relating to public meetings.

LEGISLATIVE COUNSEL'S DIGEST

AB 2028, as amended, Aguiar-Curry. State agencies: 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, except for closed sessions, require that this notice include all writings or materials provided for the noticed meeting to a member of the state body by 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 these writings and materials to be made available on the internet *website, and to people who so request in writing, on the same day as they are provided to members of the state body or at least 48 hours in advance of the meeting, whichever is earlier.* The bill would provide that a state body may only distribute or

discuss these writings or materials at a meeting of the state body if it has complied with these requirements. *The bill would except writings or materials relating to matters to be discussed in a closed session from its requirements and would authorize a state body to post and provide additional time-sensitive materials related to certain active legislation, as specified, as they become available, after the prescribed deadlines. The bill would specify that its provisions do not authorize a state body to remove writings and materials from an internet website.*

Existing law requires that a state body provide an opportunity for members of the public to directly address the body on each agenda item. Existing law exempts from this requirement, among other things, an agenda item that has already been considered by a committee composed exclusively of members of the state body at a public meeting where members of the public were afforded an opportunity to address the committee on the item.

This bill would delete this exception, thereby making the requirement to provide an opportunity to address the state body applicable to an agenda item for which the public had an opportunity to address it at a public meeting of a committee of the state body.

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. The Legislature finds and declares the following:
- 2 (a) The Bagley-Keene Open Meeting Act (Article 9
- 3 (commencing with Section 11120) of Chapter 1 of Part 1 of
- 4 Division 3 of Title 2 of the Government Code) (hereafter
- 5 “Bagley-Keene”) was intended to implement Section 3 of Article
- 6 I of the California Constitution, which states in part, “The people
- 7 have the right of access to information concerning the conduct of
- 8 the people’s business, and, therefore, the meetings of public bodies
- 9 and the writings of public officials and agencies shall be open to
- 10 public scrutiny.”
- 11 (b) Bagley-Keene was written to protect public meetings and
- 12 public notice and to ensure the transparency of actions taken by
- 13 state agencies, boards, and commissions.
- 14 (c) Californians have the right to participate in state body
- 15 deliberations. This includes the public’s ability to comment on all
- 16 agenda items discussed at a meeting of the state body, regardless

1 of whether an item has been discussed previously in a committee
2 of the state body.

3 (d) The purpose of public notice is so that state bodies give the
4 public adequate time for review of the substance of a state body
5 meeting and for comment.

6 (e) Public notice must also include any writings or materials
7 provided by a state body’s staff or by a member of the state body
8 to other members of the state body for a noticed meeting of the
9 body held at least 10 days prior to the meeting.

10 (f) Bagley-Keene affirms these rights by stating in Section 11120
11 of the Government Code, “The people of this state do not yield
12 their sovereignty to the agencies which serve them. The people,
13 in delegating authority, do not give their public servants the right
14 to decide what is good for the people to know and what is not good
15 for them to know. The people insist on remaining informed so that
16 they may retain control over the instruments they have created.”

17 SEC. 2. Section 11125 of the Government Code is amended
18 to read:

19 11125. (a) The state body shall provide notice of its meeting
20 to any person who requests that notice in writing. Notice shall be
21 given and also made available on the internet *website* at least 10
22 days in advance of the meeting, and shall include the name,
23 address, and telephone number of any person who can provide
24 further information prior to the meeting, but need not include a
25 list of witnesses expected to appear at the meeting. The written
26 notice shall additionally include the address of the internet website
27 where notices required by this article are made available.

28 (b) The notice of a meeting of a body that is a state body shall
29 include a specific agenda for the meeting, containing a brief
30 description of the items of business to be transacted or discussed
31 in either open or closed session. A brief general description of an
32 item generally need not exceed 20 words. A description of an item
33 to be transacted or discussed in closed session shall include a
34 citation of the specific statutory authority under which a closed
35 session is being held. No item shall be added to the agenda
36 subsequent to the provision of this notice, unless otherwise
37 permitted by this article.

38 (c) (1) Except as otherwise provided in paragraph (4), any
39 notice provided pursuant to subdivision (a) shall include all
40 writings or materials provided for the noticed meeting to a member

1 of the state body by the staff of a state agency, board, or
2 commission, or another member of the state body, that are in
3 connection with a matter subject to discussion or consideration at
4 the meeting.

5 (2) The writings or materials described in paragraph (1) shall
6 be made available on the internet ~~at least 10 days in advance of~~
7 ~~the meeting,~~ website, and to any person who requests ~~that notice~~
8 ~~in writing.~~ *the writings or materials in writing, on the same day*
9 *as the dissemination of the writings and materials to members of*
10 *the state body, or at least 48 hours in advance of the meeting,*
11 *whichever is earlier.*

12 (3) A state body may distribute or discuss writings or materials
13 described in paragraph (1) at a meeting of the state body only if it
14 has complied with this subdivision.

15 (4) This subdivision does not apply to writings or materials
16 prepared for a matter to be discussed in a closed session of the
17 state body.

18 (5) *If the writings or materials described in paragraph (1) on*
19 *an agenda for discussion at a meeting of the state body are related*
20 *to legislation that is before the Legislature in a current legislative*
21 *session, a state body is entitled to post online, and shall provide*
22 *upon request, additional materials related to that active legislation*
23 *with additional time-sensitive information as it becomes available*
24 *after the deadlines in this subdivision. The state body shall make*
25 *clear what date the new or changed writings or materials are*
26 *posted and, when applicable, what changes have been made in*
27 *materials already posted.*

28 (6) *This subdivision does not authorize state bodies to remove*
29 *any of the writings or materials described in paragraph (1) from*
30 *the internet website.*

31 (d) Notice of a meeting of a state body that complies with this
32 section shall also constitute notice of a meeting of an advisory
33 body of that state body, provided that the business to be discussed
34 by the advisory body is covered by the notice of the meeting of
35 the state body, provided that the specific time and place of the
36 advisory body's meeting is announced during the open and public
37 state body's meeting, and provided that the advisory body's
38 meeting is conducted within a reasonable time of, and nearby, the
39 meeting of the state body.

1 (e) A person may request, and shall be provided, notice pursuant
2 to subdivision (a) for all meetings of a state body or for a specific
3 meeting or meetings. In addition, at the state body's discretion, a
4 person may request, and may be provided, notice of only those
5 meetings of a state body at which a particular subject or subjects
6 specified in the request will be discussed.

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

9 (g) The notice shall be made available in appropriate alternative
10 formats, as required by Section 202 of the Americans with
11 Disabilities Act of 1990 (42 U.S.C. Sec. 12132), and the federal
12 rules and regulations adopted in implementation thereof, upon
13 request by any person with a disability. The notice shall include
14 information regarding how, to whom, and by when a request for
15 any disability-related modification or accommodation, including
16 auxiliary aids or services may be made by a person with a disability
17 who requires these aids or services in order to participate in the
18 public meeting.

19 SEC. 3. Section 11125.7 of the Government Code is amended
20 to read:

21 11125.7. (a) Except as otherwise provided in this section, the
22 state body shall provide an opportunity for members of the public
23 to directly address the state body on each agenda item before or
24 during the state body's discussion or consideration of the item.
25 Every notice for a special meeting at which action is proposed to
26 be taken on an item shall provide an opportunity for members of
27 the public to directly address the state body concerning that item
28 prior to action on the item. In addition, the notice requirement of
29 Section 11125 shall not preclude the acceptance of testimony at
30 meetings, other than emergency meetings, from members of the
31 public if no action is taken by the state body at the same meeting
32 on matters brought before the body by members of the public.

33 (b) The state body may adopt reasonable regulations to ensure
34 that the intent of subdivision (a) is carried out, including, but not
35 limited to, regulations limiting the total amount of time allocated
36 for public comment on particular issues and for each individual
37 speaker.

38 (c) (1) Notwithstanding subdivision (b), when a state body
39 limits time for public comment the state body shall provide at least
40 twice the allotted time to a member of the public who utilizes a

1 translator to ensure that non-English speakers receive the same
2 opportunity to directly address the state body.

3 (2) Paragraph (1) shall not apply if the state body utilizes
4 simultaneous translation equipment in a manner that allows the
5 state body to hear the translated public testimony simultaneously.

6 (d) The state body shall not prohibit public criticism of the
7 policies, programs, or services of the state body, or of the acts or
8 omissions of the state body. Nothing in this subdivision shall confer
9 any privilege or protection for expression beyond that otherwise
10 provided by law.

11 (e) This section is not applicable to any of the following:

12 (1) Closed sessions held pursuant to Section 11126.

13 (2) Decisions regarding proceedings held pursuant to Chapter
14 5 (commencing with Section 11500), relating to administrative
15 adjudication, or to the conduct of those proceedings.

16 (3) Hearings conducted by the California Victim Compensation
17 Board pursuant to Sections 13963 and 13963.1.

18 (4) Agenda items that involve decisions of the Public Utilities
19 Commission regarding adjudicatory hearings held pursuant to
20 Chapter 9 (commencing with Section 1701) of Part 1 of Division
21 1 of the Public Utilities Code. For all other agenda items, the
22 commission shall provide members of the public, other than those
23 who have already participated in the proceedings underlying the
24 agenda item, an opportunity to directly address the commission
25 before or during the commission’s consideration of the item.