

The Bagley-Keene Open Meeting Act

May 8, 2024

Jackson Demonstration State Forest
Advisory Group

Why Do We Have the Bagley-Keene Act?

- **The Bagley-Keene Act is located in Government Code sections 11120-11132**
- **“...[a]ctions of state agencies be taken openly and that their deliberation be conducted openly.”**
- **Public policy of the state that public agencies exist to aid in the conduct of the people’s business and the proceedings of public agencies be conducted openly so that the public may remain informed.**
- **In enacting this article, it is the intent of the law that the actions of state agencies be taken openly and that their deliberation be conducted openly.**

When Does Bagley-Keene Apply?

- To be subject to the Bagley-Keene Act, a State Body must conduct a Meeting.
 - What is a State Body?
 - What is a Meeting?

What is a State Body?

- A State Body exists for purposes of Bagley-Keene if it is:
 - (1) a multimember body such as a state board or state commission,
 - Must have 2 or more members
 - (2) created by one of five specified methods, and
 - Created by Statute
 - Created by Executive Order
 - Created as a Delegated Body
 - Created as an Advisory Body
 - Supported and Represented by a State Body
 - (3) not statutorily excluded.

When Does Bagley-Keene Apply?

- **Elected or Appointed**
 - The day that happens even if they have not yet assumed the position.
- **Any Action**
 - A collective decision, commitment, promise, vote by the members when sitting as a body.
- **At a Meeting... but what is a meeting?**
 - Any congregation of a majority of the members at the same time, place to hear, discuss, deliberate upon any item that is within the subject matter of the body. GC 11122.5

A Majority of a State Body

- Bagley-Keene applies when a majority of a State Body congregate.
 - This can happen either at a notice public meeting or not.
- Be aware of serial meetings.
 - Under Bagley-Keene, multiple separate private contacts among members that together amount to majority consideration of the body's business, is considered a meeting.
 - Must be a topic under the subject matter jurisdiction of the State Body.
 - Covers all types of communications – i.e. email, phone, text, etc.
 - Rule of Two for State Bodies with more than 3 members.

Gathers to Hear, Discuss, or Deliberate on

- Deliberation is more than just voting.
- Information gathering, analysis, debate, and negotiation, as well as decision-making can be subject to Bagley-Keene.

An Item Under its Subject Matter Jurisdiction

- Any item the State Body has the authority to hear is under the subject matter jurisdiction of the State Body.

What May Members Do and Not Do?

- **A majority of the members SHALL NOT:**
 - Use a series of communications of any kind, directly or through intermediaries to discuss, deliberate or take action.
 - **EXCEPTION**
 - An individual may engage in conversations outside of a meeting with members of a legislative body to answer questions, provide information so long as that member does not communicate the position of any other members.
- **A Member May**
 - Have individual contacts or conversations with a member or any person that do not violate the above.
- **A Majority May**
 - Attend a conference or similar gathering open to the public that involves general interest to the Board so long as a majority do not discuss among themselves any subject matter of Board.
 - Open to the Public doesn't mean free.

What May Members Do and Not Do?

- **A Majority of Members May**
 - **Attend an open and publicized meeting**
 - **organized to address a topic of state concern other than the state body, if a majority does not discuss amongst themselves business of their own state body, other than as part of the scheduled program for that meeting.**
 - **Attend ceremonial matters**
 - **So long as a majority does not discuss specific business of the State Body.**
 - **Attend a Standing Committee of that State Body**
 - **So long as Members of the State Body who are not members of the committee, attend only as observers.**

Exempt Communications

- **A member of a State Body communicating privately with the public.**
- **Staff may communicate privately with only one member at a time, without communicating the comments or position of any other member.**
- **The State Body may receive written legal advice.**

The Regular Meetings

- Open, all persons permitted to attend unless otherwise stated in statute.
- People in Attendance:
 - Not Required to:
 - Register their Name
 - Provide other Information
 - Complete a Questionnaire
 - Or any other conditions precedent for their attendance
 - Anyone can record audio and/or video, or still motion so long as can do reasonably without noise, illumination, obstruction or disruption.
 - May broadcast, unless a reasonable finding the broadcast cannot be done without, as above, persistent disruption.
- Any Sign-In Sheet must be identified as Voluntary.
- Not apply to Electronic Meeting where might be required, but pseudonym or anonymous acceptable.
 - Basically, since some platforms require names, the State doesn't want to be sued. They can enter anything.
- Any Audio or Video made by the State Body is subject to PRA, and a minimum of 30-day retention schedule.

Notice

- State Body shall provide Notice to any person who requests advance notice in writing.
- Notice shall be made on the internet at least 10 days in advance.
 - Shall include:
 - Name / Address/ Telephone of any person who can provide information about the meeting.
 - Meeting time and place.
 - Website for the State Body.
 - Agenda:
 - Brief description of items (generally not more than 20 words).
 - Must be adequate for person to determine if they want to participate.
 - Notice compliant with ADA.

Action on Items Not in Notice

- A State Body ordinarily may not deliberate or act upon on any item not described, or inadequately described, on the agenda.
- A State Body may take action on an item not in the agenda IF:
 - By Majority vote an emergency situation exists,
 - OR
 - 2/3rds vote, or if less than 2/3rds of members are in attendance a unanimous vote, that there exists a need to take immediate action, and that the need arose after the agenda was posted.
 - Notice of this item must still be sent out no later than 48 hour prior to the meeting.

Other Items Not in Notice

- Can discuss informational and procedural items
- Can discuss future agenda items with the public
- Cannot deliberate on a matter under its subject matter jurisdiction not on the agenda

Moving Items in Notice

- Agenda items may be moved
- Reason for moving the agenda item cannot be to frustrate the public or limit public comment

Public Comment

- **Shall provide opportunity for public to address State Body on each agenda item before or during body discussion.**
 - **Unless already discussed by all members at different meeting where public able to address.**
- **May limit the total amount of time for public comment and for each individual speaker.**
 - **Those with interpreter get double time - unless equipment allows for simultaneous translation - then the same time.**
- **Public criticism allowed.**

Public Disruptions at Meetings

- **Have a plan in place to deal with disruptions or offensive speech before any meeting. Include both how to deal with a disruptive speaker and how to protect employees that are present during the offensive speech. Get your legal counsel's sign off on that plan ahead of time.**
- **Practicing can help the chair keep a calm and focused demeanor and move the meeting forward.**
- **Make sure your IT team is prepared and has practiced cutting off video or microphones as necessary.**
- **Encourage the chair to state proactively throughout a meeting, at a frequency corresponding to the heat of the agenda, that the state body values civil, polite input.**
- **If helpful, allow meeting participants, including board members, to take a break before continuing.**
- **"Zoom bombing" is more likely when meeting links or passwords are shared on social media. Consider this before posting.**
- **When in doubt, take a recess and confer with legal counsel.**

Public Disruptions Continued

- **In the event the meeting is willfully interrupted to render meeting unfeasible AND order cannot be restored through removal of persons, the State Body may order the room cleared and continue in session.**
 - **May establish procedure for readmitting individuals not responsible for disturbing the orderly conduct.**
 - **Still must remain with agenda.**
 - **Press may remain.**
- **May adjourn any meeting (other than emergency) to a time and place in the order of adjournment.**

Consequences

- **Court may award costs and reasonable attorney fees for an action brought where it is found state body violated provisions of the article.**
- **A member who attends a meeting and INTENDS to deprive the public of information and knows or has reason to know the public is entitled to the information is guilty of a misdemeanor.**