



SHORT SUBJECTS

OPEN GOVERNMENT SERIES

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Bagley-Keene Open Meeting Act:

General Guidelines

Public participation, a core principle of open government, means reserving a seat at the table for the public. One way California has translated this principle into law is the Bagley-Keene Open Meeting Act (Bagley-Keene), which requires certain State agency deliberations and actions to be open to the public. This fact sheet provides basic information about how to include the public in Bagley-Keene-eligible meetings, when Bagley-Keene applies, and the provisions entailed in adhering to Bagley-Keene. It should serve as an informal compendium of the unabridged law.¹

THE PUBLIC'S SEAT AT THE TABLE

Bagley-Keene protects the public's right to attend an open meeting and requires that space be made to hear the public's voice. Public participation at an open meeting may not be contingent on members of the public providing information nor may they be charged a fee to attend or receive notice. If any information is collected from attendees (e.g., attendance list, questionnaire) it must be clear that providing the information is voluntary and not required to attend the meeting. The public may record the meeting as long as the recording is done without a persistent disruption. The State body meeting must provide reasonable time for members of the public to speak about each agenda item before or during discussion. The right to speak includes criticisms; however, persons purposely disrupting a meeting may be removed.

STATE BODIES

Bagley-Keene generally defines State bodies (groups) as all mandated State boards, commissions, and similar multimember groups as well as committees of these groups that have been delegated authority to make decisions and advisory committees of more than two members. Bagley-Keene also incorporates into this definition multimember groups funded by a State body where a member acts in an official capacity – this

Bagley-Keene likely applies to a State body when any one or more of the following conditions is met:

A majority of members are virtually or physically present.

A majority of members are indirectly communicating electronically or through intermediaries.

A majority of members discuss topics relevant to the group's jurisdiction.

includes groups organized by private corporations. As a matter of course, it excludes local government, judicial, and legislative meetings, which are each subject to similar laws aimed at protecting public participation.

MEETINGS

Generally, Bagley-Keene defines a meeting as occurring whenever a majority or quorum of group members are physically or virtually present to discuss a topic related to its jurisdiction. A meeting also takes place when a majority of members decide on a course of action for the group by using direct (e.g., speaking in person) or indirect (e.g., email, speaking through other people) means of communication. For example, a majority of State board members emailing each other about an action item would constitute a meeting. If a majority of members are present at a conference, a different State meeting, or a local government meeting, those attending members may speak only about topics related to their areas of authority as a part of the scheduled program. Majority attendance at social events requires that members avoid discussing topics related to their group's area of authority. For example, if a majority of the Governor's Interagency Council on

Veterans members attend a luncheon and discuss either directly or through serial communications veteran-related policy, it would be in violation of Bagley-Keene unless open-meeting protocols are followed. Members can attend other committee meetings related to their group's function, but they must avoid participating or Bagley-Keene would apply.

OPEN-MEETING PROVISIONS

Bagley-Keene requires that a group provide meeting notices and agendas to the public before it meets. The group must furnish written requestors with a meeting notice and publish it on the Internet at least ten days prior to the meeting; most groups will also email meeting notices and agendas to their listserves.² Contact information, the Internet address, and meeting locations must be included on the notice. Agendas must include descriptions of information to be discussed, and, once made available, agendas are not permitted to be changed without formal action and mandated notice. Written material given to members about information on the agenda must be made available to the public for inspection at the meeting.

SPECIAL-MEETING EXCEPTIONS

A special meeting is exempt from the ten-day public notice rule for open meetings and may be held if due notice imposes substantial hardship on the group or when immediate action must be taken (e.g., to discuss proposed legislation). At the beginning of a special meeting, the group must establish the facts supporting having a special meeting. They must have a 2/3 majority vote to accept the facts as legitimately necessitating the special meeting if at least half of the members are present or a unanimous vote if fewer attend. Provisions for special meetings are generally the same as those for open meetings, but there are key differences to what is considered due notice. As soon as is practicable, the notice of the meeting should be posted on the Internet and given to State body members, public requestors, and to national press wire services. Generally, the notice should be given at least 48 hours prior to the meeting.

EMERGENCY-MEETING EXCEPTIONS

An emergency meeting is exempted from the ten-day and 48-hour public notice rules for open meetings and special meetings, respectively, and may be held if there is an emergency (i.e., work stoppage or crippling disaster that threatens public health or safety). Unless impossible to do so by telephone, the presiding officer of the group, or her/his designee, must provide notice to media requestors at least one hour prior to the meeting. If impossible to do so, then as soon as possible, the media must be notified of the purpose of and actions taken at the meeting. Records from the meeting about whom the presiding officer, or designee, attempted to notify, any roll call vote, and actions taken must be made available as soon as possible after the meeting for at least ten days in a public place and on the Internet.

ENDNOTES

- 1 California's Office of the Attorney General publishes the unabridged law with a longer summary: http://ag.ca.gov/publications/bagleykeene2004_ada.pdf. Also, see updated Government Code §11120-11132.
- 2 California Attorney General's Office. A Handy Guide to the Open Meeting Act 2004. (2004). http://ag.ca.gov/publications/bagleykeene2004_ada.pdf. Also, see updated Government Code §11120-11132.

The California Research Bureau is a division within the California State Library, providing in-depth research and non-partisan public policy analysis to members of the State Legislature and the Governor. <http://www.library.ca.gov/CRB/>.

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