

Bagley Keene Presentation
DOSH Advisory Committee on
Domestic Worker Health and
Safety

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Kumani Armstrong, Special Counsel,
California Department of Industrial Relations

I. What is Bagley Keene?

The Bagley-Keene Open Meeting Act is set forth in Government Code sections 11120-11132.

- The Act covers multimember bodies. **A multimember body is three or more people. Examples: state boards, commissions, advisory committees, councils, panels.
- The body must be created by statute or required by law to conduct official meetings.
- Generally, it ensures transparency and requires these bodies to publicly notice their meetings, prepare agendas, accept public testimony and conduct their meetings in public unless specifically authorized by the Act to meet in closed session.

2. What is a Meeting? Broad Interpretation.

The issue of what constitutes a meeting is one of the more troublesome and controversial issues under the Act.

- A meeting occurs when a quorum (majority) convenes, either serially or all together, in one place, to address issues under the body's jurisdiction.
- A meeting includes gatherings where members discuss issues or receive information relevant to the business of the advisory committee.

II. Pitfalls and Things to Avoid

1. **Serial Meetings – The Act expressly prohibits the use of direct communication, personal intermediaries, or technological devices that are employed by a majority of the members of the state body to develop a collective concurrence as to action to be taken on an item by the members of the state body outside of an open meeting.**

- Example 1: A chain of communications involving contact from member A to member B who then communicates with member C would constitute a serial meeting in the case of a five-person body.
- Example 2: When a person acts as the hub of a wheel (member A) and communicates individually with the various spokes (members B and C), a serial meeting has occurred.
- Example 3: Intermediaries for board members have a meeting to discuss issues. When a representative of member A meets with representatives of members B and C to discuss an agenda item, the members have conducted a serial meeting through their representatives acting as intermediaries.

2. Public contact of individual members.

- **A communication from a member of the public to discuss an issue does not violate the Act. The difficulty arises when the individual contacts a quorum of the body. So long as the body does not solicit or orchestrate such contacts, they would not constitute a violation of the Bagley-Keene Act. Because of the high risk of impermissible contacts, it is not advisable for a body to allow these individual contacts to occur.**

III. Key Takeaways

Avoid talking about any advisory committee business or potential advisory committee business with other members outside of a public meeting.

- Goal is transparency
- Use common sense
- To the extent feasible, avoid discussing advisory committee business with the public outside of a public meeting.
- When in doubt, do not discuss advisory committee business outside of a public meeting and seek legal counsel.
- The Act provides for remedies and penalties in situations where violations occur. The decision of the body may be overturned, violations may be stopped or prevented, costs and fees may be awarded, and in certain situations, there may be criminal misdemeanor penalties imposed as well with the intent to deprive the public of information.