

# Bagley-Keene Open Meeting Act Summary<sup>1</sup>

(Government Code §11120 et seq.)

<b>Highlights</b>	
<p style="text-align: center;"><b><u>Dos</u></b></p> <ul style="list-style-type: none"><li>• Provide new members with a copy of the Act</li><li>• Give timely public notice of forthcoming meetings</li><li>• Include agenda listing items of business in notices</li><li>• Provide opportunity for public comment</li><li>• Conduct meetings in public, unless a closed session is authorized</li></ul>	<p style="text-align: center;"><b><u>Don'ts</u></b></p> <ul style="list-style-type: none"><li>• Contact other members individually to discuss, deliberate, or take action outside a meeting</li><li>• Solicit contact from the public</li><li>• Talk business outside an open meeting (i.e., social situations, conferences, or retreats)</li><li>• Impose restrictions on attendance or participation at the meeting</li><li>• Add items to the agenda after notice is issued, unless they fall within a statutory exception</li></ul>
<p style="text-align: center;"><b><u>Consequences if the Act Is Violated</u></b></p> <ul style="list-style-type: none"><li>• Misdemeanor penalties may be imposed on the individual members of the body who attend a meeting in violation of the Act, with the intent to deprive the public of information to which it is entitled under the Act, that the member knows or has reason to know.</li></ul>	

## Detailed Summary

### **Purpose of the Act**

- Ensure that state boards and advisory bodies conduct proceedings and deliberations openly so that the public can remain informed about government activities

### **Bodies Covered by the Act**

- General rule: Two requirements
  - Multimember body: two or more people
    - Examples: state boards, commissions, committees, panel, and councils
  - The body must be created by statute or required by law to conduct official meetings
- **Advisory Bodies (two types)**
  - Created by the Legislature
  - Have three or more members created by formal action of another body
    - If fewer than three members, not subject to the requirements of the Act
- **Delegated Body**
  - The power to act is delegated by another body

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<sup>1</sup> This summary of the Bagley-Keene Act was created by the Division of Workers' Compensation as an overview of some provisions of the Act but is not intended to substitute for reading the full text of the Act, which is necessary to understand its terms and the obligations of the state body and its members.

- Example: An executive committee given the authority to act on behalf of the entire body between meetings
    - No size requirement but must consist of multiple members
- **Commissions Created by the Governor**
  - Created by executive order
- **Body Determined by Membership**
  - A member of a state body serves as a representative to another body, which is funded by the representative's state body

### Members-to-Be

- Provisions of the Act apply to new members at the time of election or appointment
  - Prevents newly appointed members from meeting secretly among themselves
- Requires bodies to provide their new members with a copy of the Act

### What Is a Meeting?

- *Definition:* A majority of a body convenes, either serially or all together, in one place, to hear, discuss, or deliberate on any item within the subject matter jurisdiction of the board
- **“Serial Meetings”**
  - *Definition:* A series of communications, each of which involves less than a majority of the body but that, taken as a whole, involves a majority of the members
  - Prohibits the use of direct communication, personal intermediaries, or technological devices employed by a majority of the members to discuss issues, deliberate, or take any action outside open meetings
  - Members must refrain from calling or contacting other members on a one-to-one basis or conducting serial meetings, in order to discuss, deliberate, or take action on issues within the subject matter jurisdiction of the body
- **Contacts by the Public**
  - A communication from a member of the public to discuss an issue does not violate the Act
  - As long as the body does not solicit such contacts from the public, it is not in violation of the Act
- **Social Gatherings**
  - Exempts purely social situations
  - Avoid “shop talk” at social events
- **Conferences and Retreats**
  - Exempt as long as they are open to the public and involve subject matter of general interest, and a majority of the members of the body do not discuss among themselves issues within the subject matter jurisdiction of the body, other than as part of the scheduled program
- **Teleconference Meetings**
  - When a meeting is held via teleconference, each site from which a member of the body participates must be accessible to the public and identified on the agenda
    - Example: A member cannot participate from his/her car, because the car is not open to the public
  - All proceedings must be audible, and votes must be taken by rollcall
  - Amendments that became effective January 1, 2019, allow but do not require an advisory body to permit a member of the body to participate in the meeting from a remote location (Statutes 2018, Chapter 881)

### **Notice and Agenda Requirements**

- Requires notice of meetings to be posted on the relevant webpage and sent to those who submit a written request
- Agenda must be issued at least 10 days prior to the meeting and include all items to be covered in the meeting
- Agenda must include the following items:
  - Time and place of the meeting
  - Name, phone number, and address of a contact person who can answer questions about the meeting and agenda
  - Website address where the agenda can be accessed
  - Meeting topics must include a brief description (no more than 20 words long)
  - Contact info for disability accommodation or modification requests
- Notice and agenda requirements apply to both open and closed meetings

### **Regular Meetings**

- *Definition:* A meeting of the body conducted under normal or ordinary circumstances
- Requirements:
  - 10-day notice: notice of the meeting must be given, along with an agenda that describes what will be covered
  - Upon request by any person with a disability, the notice must be made available in appropriate alternative formats
- Two special situations in which items may be added to the agenda outside the 10-day period
  - *Situation 1:* Topic to be added qualifies for an emergency meeting
  - *Situation 2:* Immediate action is needed, and the body was notified after the 10-day notice requirement
    - Two-thirds vote required
    - Unanimous vote required if two-thirds of the members are not present
  - Revised agenda requirements
    - 48-hour notice required prior to the meeting
      - Must be delivered to national wire services (newspaper, radio, or television)
    - Posted on the internet immediately

### **Special Meetings**

- Can be called at any time by the presiding officer or a majority of the members of the state body, if the 10-day notice requirements would impose a hardship on the state body or where immediate action is required to protect the public interest
  - Reason to call a special meeting must be justified with a finding
    - Finding must be adopted by a two-thirds vote of the body
- Reasons for calling a special meeting are limited
  - Examples: Pending litigation, legislation, licensing matters, and certain personnel actions

### **Emergency Meetings**

- Rare instances, such as a crippling disaster or work stoppage that could impair public health and safety
- Requirements
  - One-hour notice to the media (newspapers, television, and radio stations)
  - Must be held in open session
  - Postings in a public place and on the internet for a minimum of 10 days after the meeting

- Minutes of the meeting
- A list of people notified, or attempted to be notified, of the meeting
- Actions, if any, taken at the meeting
- A copy of the rollcall vote on action taken

### **Public Participation**

- Cannot impose conditions on attendance at the meeting
- Use of a sign-in sheet is not prohibited
  - Notice must be clearly given that signing in is voluntary and not required to attend or speak at the meeting
- Members of the public are allowed to record and broadcast the meetings
- People with limited English are allowed additional time for using a translator (at least twice the allotted time)

### **Access to Records**

- The public is entitled to have access to public records of the body
  - Materials provided to the body before or during the meeting must be made available to the public, unless the materials are confidential
  - Under the Public Records Act, the agency may charge for duplication of documents

### **Accessibility of Meeting Locations**

- The meeting place and manner in which the meeting is held must be nondiscriminatory
- Must be accessible to the disabled
- No fee can be charged for attendance

### **Closed Sessions**

- Closed sessions must be listed on the meeting agenda and properly noticed
- Prior to convening in closed session, the body must publicly announce the issues to be considered
  - May reference the closed-session agenda and cite the provision that authorizes the closed session
- Following the closed session, the body is required to reconvene in public
- Minutes of the closed sessions are required. These minutes are confidential and are disclosed only to the board or court.
- **Personnel Exception**
  - *Purpose:* To protect the privacy of the employee and to allow the board members to speak candidly
  - Applies only to employees
  - Members of the body are not considered employees, so they cannot claim a personnel exception
  - Can be used to consider appointments, employment, evaluation of performance, discipline or dismissal, and charges or complaints about an employee's actions
    - If the body decides to address a complaint against an employee by a third party person, the Act requires 24-hour written notice to the employee
      - Failure to provide notice voids any action taken in closed session
      - Employee has the right to have the matter heard in a public session, but not in a closed session

- **Pending Litigation Exception**
  - *Purpose:* To permit the state body to confer with its attorney in circumstances in which, if that conversation occurred in open session, it would prejudice the position of the state body in litigation
  - Three basic “pending” litigation scenarios:
    - Agency is party to existing litigation (a complaint, claim, or petition has been filed)
    - Agency has substantial exposure to litigation
    - Determining whether to initiate litigation
- **Deliberations Exception**
  - *Purpose:* To permit a body to deliberate on decisions in a proceeding under the Administrative Procedures Act in closed session
- **Real Property Exception**
  - *Purpose:* The body can advise its negotiator in situations involving real estate transactions (price and terms of payments)
    - Specific parcel and the other party must be identified
- **Security Exception**
  - *Purpose:* To consider matters that pose a possible threat of criminal or terrorist activity against the personnel, property, buildings, facilities, or equipment, including electronic data controlled by the state body
    - a two-thirds vote required of those present
    - Must reconvene in open session before adjournment and report that a closed session was held. General description and results provided.

### **Remedies for Violations**

- Within 90 days of the decision, any interested person may file a suit alleging violation of the Act, which may include unauthorized closed sessions or meetings with improper notice
- Possibly overturning the decision
- Plaintiff may recover the costs of the suit and attorney’s fees from the body, but not the individual members
- The body may recover attorney’s fees and costs only if the plaintiff’s case has no merit
- Misdemeanor penalty applies when the members’ intent was to deprive information from the public

### ***Additional Resources:***

The Bagley-Keene Act:

[http://leginfo.legislature.ca.gov/faces/codes\\_displayText.xhtml?lawCode=GOV&division=3.&title=2.&part=1.&chapter=1.&article=9/](http://leginfo.legislature.ca.gov/faces/codes_displayText.xhtml?lawCode=GOV&division=3.&title=2.&part=1.&chapter=1.&article=9/)

Department of Consumer Affairs: Guide to the Bagley-Keene Open Meeting Act

[https://www.dca.ca.gov/publications/bagleykeene\\_meetingact.pdf](https://www.dca.ca.gov/publications/bagleykeene_meetingact.pdf)

California Department of Justice: A Handy Guide to the Bagley-Keene Open Meeting Act 2004

[http://ag.ca.gov/publications/bagleykeene2004\\_ada.pdf](http://ag.ca.gov/publications/bagleykeene2004_ada.pdf)