

Bagley-Keene Open Meeting Act

Purpose and General Rule

- To allow the public to participate in government and have an opportunity to participate in the decision-making process of state bodies
- The public is allowed to monitor and participate in all meetings of state bodies, unless there is a specific reason to exclude the public. Three general requirements:
 - Public Notice
 - Opportunity to Comment
 - Public Access

Bodies Covered by the Act

- Any multimember body created by statute
- Health Benefit Exchange Board specifically subject to Bagley-Keene under SB 900, subject to exceptions (Government Code 100500(j))

What Constitutes a Meeting?

- A physical meeting: “Any congregation of a majority of the members of a state body at the same time and place to hear, discuss, or deliberate upon any item that is within the subject matter jurisdiction of the state body to which it pertains.”

Serial and Spoke Meetings

- A quorum of members may not discuss any matter within the Board's subject matter jurisdiction in a series of meetings (A talks to B, then to C)
- A quorum of members may not discuss a matter within the Board's subject matter jurisdiction through representatives (A, B, and C each talk to a third, non-member party)
- What a quorum may not do as a group it may not do through a series of meetings or through representatives

Exceptions to Meeting Rule

- Separate communications with a member of a legislative body such as the legislature or a committee, as long as no communication about another board member's position
- Individual contacts between board members and members of the public
- Conferences that are open to the public and involve discussion of issues of general interest to the public (as long as no private communication between a quorum of board members)

Exceptions (continued)

- Social gatherings (but no discussion of matters within the board's subject matter jurisdiction)
- Open meetings of standing committees
- Open meetings of other state bodies or of local agencies

Teleconference Meetings

- Meetings by teleconference are permissible
- Each location from which a member participates must be accessible to the public
- All votes by rollcall, all other provisions apply

Notice and Agenda

- Notice of upcoming meetings must be provided to persons who request it and on the agency website at least 10 calendar days before the meeting
- Time and place of meeting, name and contact information for a person who can provide information
- Include a specific agenda with a brief (20-word) description of each item
- Agenda includes closed-session items, and statutory basis for holding closed session
- Make available in alternative formats under ADA

Public Access and Participation

- Board may not impose conditions on public attendance at a meeting
- Any sign-in sheet at meetings must be accompanied with a notice that it is voluntary
- Members of the public may record and broadcast meetings unless doing so would constitute a persistent disruption
- Public must have the opportunity to speak either before or during consideration of each agenda item
- No discrimination of attendance based on race, national origin, etc.; no entrance fee
- Meeting facilities must be accessible to disabled

Access to Records

- Any written materials provided to a majority of the board are disclosable public records
- Must be made available in alternative formats to disabled individuals who request them
- Subject to exemptions under Public Records Act (e.g., attorney-client privileged documents are not public records subject to disclosure)
- May charge requester for the cost of duplicating materials

Closed Session

- All discussion must be public, subject to narrow exceptions
- Before going into closed session, must publicly announce items to be considered in closed session
- Closed session items must be listed on agenda, along with statutory authority for entering into closed session
- Must reconvene in public after closed session; need report publicly only if it decided to hire or fire an employee
- Must keep minutes of closed session, but they are not public records
- Only those directly involved in the closed session as part of official duties may attend a closed session

Major Closed Session Exceptions

- Discussing “appointment, employment, evaluation of performance, or dismissal” of employee or to hear charges against employee
- Discussion of pending litigation with legal counsel if discussion in open session would prejudice the board’s litigation position
- Discussion of rates and contracts
- No other attorney/client privilege

Remedies for Violations

- Invalidation of action taken in violation
- Prevent future violations
- Costs and attorneys' fees may be recovered from the body
- Misdemeanor penalties if a member attends a meeting with intent to deprive the public of information he/she knows or should know the public is entitled to