

Bagley–Keene Open Meeting Act

Government Code §§ 11120–11132

Knowing When and How the Public Gets a
Seat at the Table



Policy

- ▶ Policy (Govt. Code, 11120)
 - Public agencies exist to aid in the conduct of the people's business, not just the agencies'.
 - People do not yield their sovereignty to agencies.
 - People do not delegate to agencies to decide what is good for them to know or not know.
 - Proceedings of public agencies should be conducted openly so that the public can remain informed.
 - They should remain informed so that they can retain control.

Purpose and Intent of Act

- ▶ It is the intent of the act that the following should be done openly:
 - The actions taken by state agencies.
 - The deliberations conducted by state agencies.
- (Govt. Code 11120)



Applies to State Bodies

- ▶ Most operative sections do not cover “state agencies,” but rather “state bodies.”
- ▶ Every requirement applies to every state body unless specifically excepted. (GC 11127)
- ▶ “State bodies” defined as:
 - Every state board, commission or similar multi-member body (MMB) of the state that is
 - Created by statute or
 - Required by law to conduct official meetings
 - Every commission created by executive order.
(Govt. Code, 11121)

“State Body” Also Includes

- A board, commission or similar MMB that exercises any authority of a state body delegated to it by the state body.
- An advisory board, commission, committee, subcommittee or similar MMB of a state body, if:
 - created by formal action of a state body or of any member of a state body and
 - Consisting of 3 or more persons.
- A board, commission or similar MMB organized and operated by either a state body or a private corporation on which:
 - A member of a state body serves in an official capacity and
 - That is supported, in whole or in part, by funds provided by the state body.

(Govt. Code, 11121)

Open Meeting Requirement

- ▶ *A meeting is 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.*
- ▶ All persons must be permitted to attend any meeting of a state body
- ▶ All meetings of a state body must be: Open & Public
- ▶ Except as provided by the Act
 - Closed sessions (see later slides)
 - (Govt. Code §§ 11123, 11126)

What Is Not A “Meeting”?

- Individual contacts between a member of a state body and any other person (other than to develop collective concurrence)
- Attendance of a majority of members of a state body at:
 - Conferences
 - An open and publicized meeting organized by a non-governmental entity
 - An open and noticed meeting of another state body or local legislative body
 - A purely social or ceremonial occasion
 - An open and noticed meeting of a standing committee of the state body, provided the members of the body who are not members of the committee attend only as observers
- Provided that the members do not discuss among themselves business of a specific nature that is within the subject matter jurisdiction of the state body

(Govt. Code § 11122.5)

Types of Meetings

<u>Meeting</u>	<u>Definition/Requirements</u>
Regular (Govt. Code §§ 6800, 11125)	When a quorum meets under normal or ordinary circumstances <ul style="list-style-type: none">• Must provide notice to any person who requests that notice in writing• Made available on the Internet <u>at least 10 days in advance</u>• Computed by excluding the first day and including the last (Civ. Code §§ 10, 12)
Special (Govt. Code § 11125.4)	May be called for a purpose specified in the Act. <ul style="list-style-type: none">• Called by majority of members or presiding officer• Compliance with 10-day notice requirement would impose a substantial hardship or frustrate the requirement for immediate action to protect the public interest<ul style="list-style-type: none">– Must make finding at beginning of meeting by 2/3 vote (unanimous if 2/3 or less are present)– Require <u>48 hours notice</u> minimum
Emergency (Govt. Code § 11125.5)	A meeting involving matters on which prompt action is necessary <ul style="list-style-type: none">• Work stoppage or crippling disaster that severely impairs public health or safety<ul style="list-style-type: none">– Requires <u>1 hour notice</u> minimum



Serial Meetings

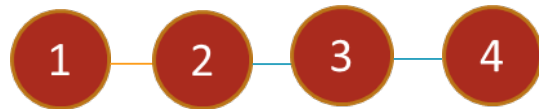
- A series of communications which “taken as a whole” involve the majority of members
- Examples:
 - Conversations that clarify members’ understanding of issues
 - Conversations that facilitate the agreement/compromise or advance the ultimate resolution of an issue



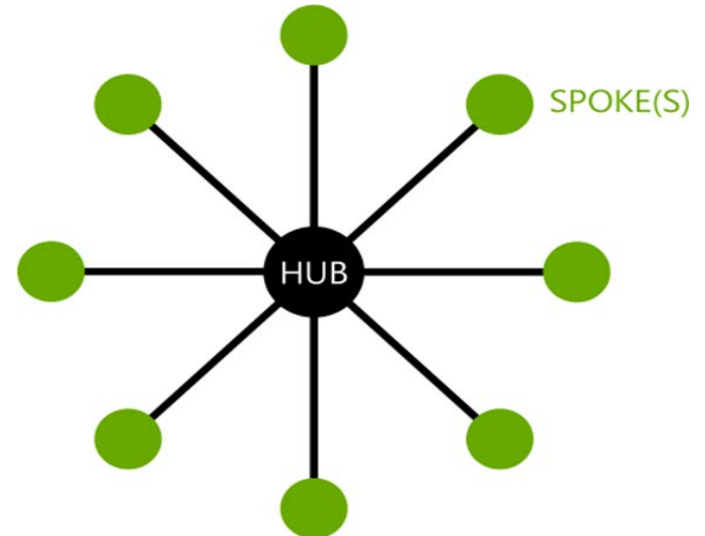


Forms of Serial Meetings

Linear Communication



Hub
Communication





Meeting Notice Requirements

1. Time and place of the meeting
2. The name, address and telephone number of the person who can provide further information prior to the meeting
3. The internet address where the required notice is available
4. Specific agenda for the meeting
 - Brief description (<20 words) of the items of business to be transacted or discussed in both open and closed sessions.
 - Enough info to allow people to decide whether to attend. (AG's Handbook, p. 8)
 - If a closed session item, must include a citation to the statutory authority for the closed session (Govt. Code § 11125)

Late Added Agenda Items

- Only if:
 - A majority determines that an emergency situation exists, *or*
 - 2/3 of state body determine that:
 - There exists a need to take immediate action
 - The need for action came to the attention of the state body after the notice was issued
- Notice of added items must be provided at least **48 hours** before the time of the meeting
- No action may be taken on non-noticed items.

(Govt. Code § 11125.3)



Teleconference Meetings

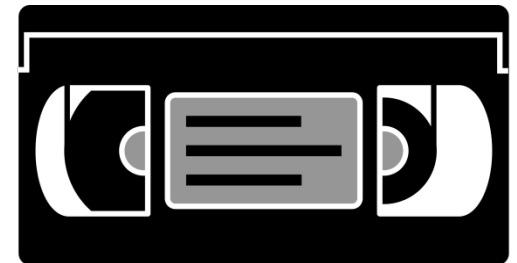
- The portion of the meeting that is open must be audible to the public at the location specified in the notice
 - *location must also be ADA compliant!*
- Agendas must be posted at each teleconference location
- At least one member of the state body must be present at each teleconference location
- All votes must be taken by roll call (no secret ballots, no proxies)
- The meetings must be conducted in a manner that protects the rights of the public and members, and does not produce a chilling effect
- Members of the public must be given the opportunity to address the state body at each teleconference location (Govt. Code § 11123(b))



Sign-in Sheets and Right to Record

- ▶ Sign-in Sheets cannot be required as a condition precedent to public attendance.
 - Includes questionnaires and requests for other information.
- ▶ If circulated, the sign in-sheet must clearly state that it is voluntary, and that persons may attend regardless whether they provide the information.
- ▶ Any person attending an open and public meeting has the right to make an audio or video recording, or take still photos.
 - Unless reasonable finding that the recording or broadcast cannot continue without noise, illumination or obstruction of view that would constitute a persistent disruption of the proceedings.

(Govt. Code §§ 11124, 11124.1)



Access to Records

- ▶ The public is entitled to have access to meeting records unless they are not required to be divulged under the Public Records Act (PRA Request)
- ▶ When public records pertaining to an agenda item are prepared by a member of the state body, and distributed to state body members during a meeting, the documents must be made available for public inspection at the meeting. If records are prepared by some other person, and distributed to members of the state body during a meeting, the documents must be made available for public inspection after the meeting. (§11125.1(b))
- ▶ Records exempt from public disclosure under specified statutes are not required to be publicly disclosed. (§11125.1(a), (b))
- ▶ Records must be available in alternative formats upon request by a person with a disability.



Public Participation

- ▶ Must provide opportunity to directly address the state body on each open session agenda item, unless previously provided.
- ▶ Before or during the state body's discussion or consideration of the item.
- ▶ State body may adopt reasonable regulations, including the amount of time.

(Govt. Code, 11125.7)



Disruptions

- ▶ If a meeting is willfully interrupted by a group or groups of persons and
- ▶ Orderly conduct of meeting is rendered infeasible and
- ▶ Order cannot be restored by removal of individuals
- ▶ State body may order the room cleared and continue in session on matters on agenda.
- ▶ Members of the media not participating in the disturbance must be allowed to attend.

(Govt. Code, 11126.5)

Closed Sessions

- ▶ May be called only during a regular or special meeting.
(Govt. Code, 11128)
- ▶ Clerk must maintain a minute book of, or maintain a recording of, closed sessions.
(Govt. Code, 11126.1)
- ▶ Prior to closure, state body must in open session disclose general nature of the items to be discussed. (Govt. Code, 11126.3)



Examples of Closed Sessions

May be called to discuss:

- ▶ Personnel matters
 - Appointment, evaluation, discipline (requires 24-hour notice to employee), dismissal, charges/complaints
- ▶ Pending litigation
 - *Attorney must be present to invoke this exception!*
 - Filing litigation, currently in litigation, substantial exposure to litigation
- ▶ Licensing actions
- ▶ Administrative hearings
- ▶ Real estate transactions
- ▶ Criminal or terrorist threats
- ▶ Confidential final draft audit of State Auditor

Consequences of Non-Compliance

- ▶ The AG, DA or any interested person may:
 - seek mandamus, injunctive or declaratory relief to:
 - Prevent violations or threatened violations
 - Determine the Act's applicability to past actions or future actions
 - Determine the validity of rules that penalize or discourage the expression of members
 - Determine whether an action taken in violation of open meeting or notice requirement is null and void; must be substantial.

(Govt. Code, 11130 & 11130.3)

Criminal Sanctions

- ▶ It is a misdemeanor if:
 - If a member attends a meeting of the body in violation of the Act and
 - The member intended to deprive the public of information to which the members knows the public is entitled under the Act.

2015 Update to Bagley Keene Act

▶ Recording votes:

- For all action items at board meetings and meetings of committees of +3, the law now requires boards to record the vote or abstention of each member present for that action item.
- This means the board 's minutes must include each board member's name under the appropriate vote category (i.e. yes , no, abstention).



Useful Bagley Keene Links

- ▶ Office of the Attorney General (2004):
 - http://ag.ca.gov/publications/bagleykeene2004_ad_a.pdf
- ▶ Department of Consumer Affairs (2015):
 - http://www.dca.ca.gov/publications/bagleykeene_meetingact.pdf

Questions?

