

Bagley-Keene Open Meeting Act

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

Applies to State Bodies

- Most operative sections do not cover “state agencies,” but rather “state bodies.”
- “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

- 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
 - that exercises any authority of a state body delegated to it by the state body.
 - is 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

- All meetings of a state body must be:
 - Open
 - Public
- All persons must be permitted to attend any meeting of a state body
- Except as provided by the Act.

(Govt. Code, 11123)

What is a “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.
- Unless it is an authorized teleconference meeting, any use of direct communication, personal intermediaries, or technological device by a majority of a state body to develop collective concurrence as to action to be taken, is prohibited.
 - Prevents “serial” meetings.

(Govt. Code, 11122.5)

What Isn't 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 at:
 - a conference, or
 - an open and publicized meeting organized by a non-governmental entity, or
 - an open and noticed meeting of another state body or local legislative body, or
 - a purely social or ceremonial occasion, or
 - an open and noticed meeting of a standing committee of the state body;
- 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)

Teleconference Meetings

- The portion of the meeting that is open must be audible to the public at location specified in the notice.
- Agendas must be posted at each teleconference location.
- The meetings must be conducted in a manner that protects the rights of the public and members.
- Members of the public must be given the opportunity to address the state body at each teleconference location.
- One member of the state body must be present at each teleconference location.
- All votes must be taken by rollcall.

(Govt. Code, 11123(b))

Sign-in Sheets/Recording

- Sign-in sheets cannot be required as a condition precedent to public attendance.

(Govt. Code, 11124)

- 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, 11124.1)

Public Participation/Disruptions

- Must provide opportunity to directly address the state body on each open session agenda item before or during the state body's discussion or consideration of the item.

(Govt. Code, 11125.7)

- State body may order the room cleared and continue in session where there is
 - a willful interruption by a group or groups of persons rendering orderly conduct of meeting infeasible and
 - Order cannot be restored by removal of individuals.

(Govt. Code, 11126.5)

Notice Requirements

- The state body must provide notice of its meeting to any person who requests that notice in writing.
- Notice must be given and made available on the Internet at least 10 days in advance of the meeting.

(Govt. Code, 11125)

- Computed by excluding the first day and including the last. (Civil Code, 10; Govt. Code, 6800; CCP, 12.)

Notice Contents

- Name, address and telephone number of the person who can provide further information prior to the meeting.
- Time and place of the meeting.
- The internet address where the required notice is available.
- Specific agenda for the meeting.
 - Brief description (20 words or less) of the items of business to be transacted or discussed in both open and closed sessions.
 - If a closed session item, must include a citation to the statutory authority for the closed session.

(Govt. Code, 11125)
 - Enough info to allow people to decide whether to attend. (AG's Handbook, p. 8)

Late Added Agenda Items

- Only if:
 - a majority determines that an emergency situation exists.
 - 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 at least 48 hours before the time of the meeting.

(Govt. Code, 11125.3)

Special Meetings

- Called when 2/3 of state body finds that compliance with 10-day notice requirement would:
 - Impose a substantial hardship, or
 - Frustrate the requirement for immediate action to protect the public interest.

(Govt. Code, 11125.4(a))

- 48 hour minimum notice.

(Govt. Code, 11125.4(b))

Grounds for Special Meetings

- To consider:
 - Pending litigation
 - Proposed legislation
 - Issuance of a legal opinion
 - Disciplinary action of state officer or employee
 - Real estate transactions
 - License examinations and applications
 - Housing and Home Finance Act Loans & Grants
 - Responses to confidential final draft audits
 - Interim appointments of executive officer
(Govt. Code, 11125.4(a))

Emergency Meetings

- In case of emergency situation, i.e.,
 - Work stoppage or other activity that severely impairs public health or safety, or both.
 - Crippling disaster that severely impairs public health or safety, or both.
- Involving matters on which prompt action is necessary.
- Due to disruption or threatened disruption of public facilities.

(Govt. Code, 11125.5)

Emergency Meeting Notice

- Neither 10-day nor 48 hour notice requirements apply.
- Must be posted on internet as soon as practicable after decision to hold meeting.
- Newspapers of general circulation, radio and television stations that have requested notice must be notified by phone at least 1 hour prior to meeting.
 - Deemed waived if phones are out; information given afterwards.

(Govt. Code, 11125.5)

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)

Grounds for Closed Sessions

- May be called to discuss:
 - The appointment, employment, evaluation of performance or dismissal of public employees or complaints brought against them.
 - Employee must be given 24 hour notice.
 - Licensing actions
 - Administrative hearings
 - Legal Advice on Pending litigation
 - Real estate transactions
 - Criminal or terrorist threats
- (Govt. Code, 11126)
- Confidential final draft audit of State Auditor (GC 11126.3)

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)

Payment of Attorney Fees

- Courts may award costs and reasonable attorney fees where it finds a violation, to be paid by the state body.
- Court may award costs and reasonable attorney fees to a prevailing state body if the action was clearly frivolous and totally lacking in merit.

(Govt. Code, 11130.5)

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.