

Bagley-Keene Open Meeting Act

Government Code §§ 11120-11132

Purpose of Bagley-Keene

- Sunshine Amendment (2004)
Cal. Const., art. I, § 3(b)
 - Affords the public an ability to monitor and participate in the decision-making process
 - Mandates public access to meetings, documents and communications

Public Participation

- Members of the public must be allowed to:
 - Speak regarding any item on the agenda
 - Speak about items not on the agenda
 - Record the meeting
 - Access documents provided or discussed at the meeting

Bagley-Keene & Robert's Rules

- BK is the State's rules about public access to the meeting
- RR keep the meeting organized
 - Vice-chairperson is responsible for maintaining Robert's Rules in the meeting
 - Note: Multiple versions of RR

Who Must Follow BK?

- State multi-member boards and commissions
 - Bodies either created by statute
 - Bodies required by law to conduct meetings
 - Every commission created by executive order (this includes a letter from the Governor)
 - Advisory or delegated authority bodies
 - Committees, subcommittees, and workgroups

“State Body” Also Includes

- An advisory board, commission, committee, subcommittee or similar multi-member 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
 - If you are unsure as to the number of state body members comprising the group, look at the intent of the group (to subvert BK)

(Govt. Code § 11121, subsections (a)(b) and (c))

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 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

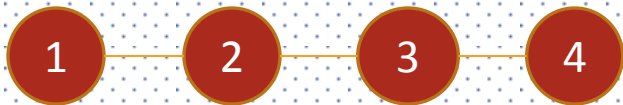
| <u>Meeting</u> | <u>Definition/Requirements</u> |
|---|--|
| Regular (Govt. Code §§ 6800, 11125) | When a quorum meets under normal or ordinary circumstances <ul style="list-style-type: none">• Must provide notice to any person who requests that notice in writing• Made available on the Internet <u>at 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

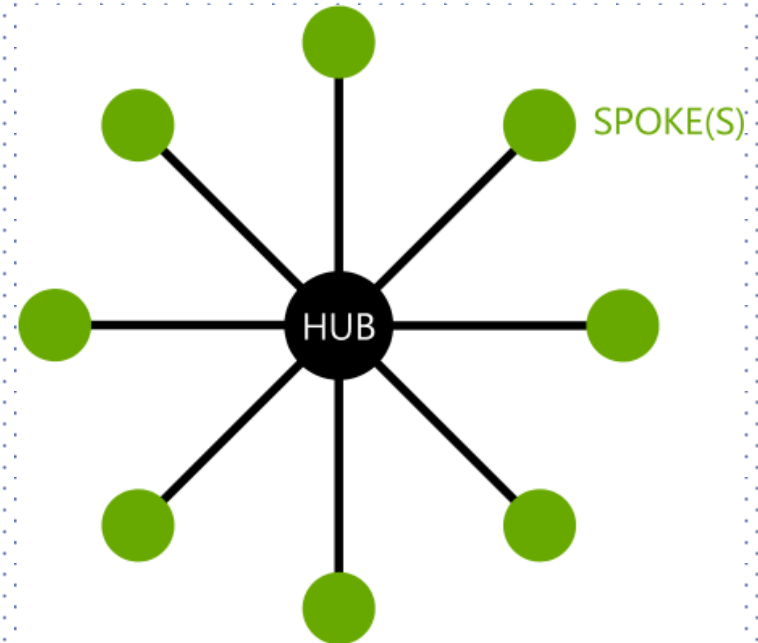
- A series of communications which “taken as a whole” involve the majority of members
- Examples:
 - Conversations that clarify members’ understanding of issues
 - Conversations that facilitate the agreement/compromise or advance the ultimate resolution of an issue

Forms of Serial Meetings

Linear communication



Hub communication



Serial Meetings Take-Away

- Legal interpretation:
 - As long as a quorum* is not involved, conversations may be permitted between members; HOWEVER
- Practical implications:
 - Since the serial meeting cannot be contained, it is best not to discuss agenda items outside of an open meeting.

*No definition of a quorum

-RR's defines it as 50% +1; appointed vs. seated

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))

Basic 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
 - If a closed session item, must include a citation to the statutory authority for the closed session (Govt. Code § 11125)

Notice Misc.

- Fees cannot be charged for posting notice
- Notice must be made available in alternate formats if requested
 - The notice must include the manner and deadline for such a request

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

(Govt. Code § 11125.3)

Sign-in Sheets/Recording

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

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
- 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, 11125.7)

Access to Records

- The public is entitled to have access to records unless they are not required to be divulged under the Public Records Act (PRA Request)
- Records must be available in alternative formats

Closed Sessions

- May only be called during a regular or special meeting
- Issues to be discussed during closed session must be listed on the agenda
- Confidential minutes must be kept

Examples of Closed Sessions

- 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

BK Violations

- Overturn decision or action
- Start the process over (notice, new votes, etc.)
- Lawsuit (must be filed within 90 days of alleged breach)
 - 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)
- Misdemeanor criminal charges, if there was an intent to deceive the public (Govt. Code § 11130.7)

2015 Updates to BK

- 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).
- Forms of Notice:
 - An agency is authorized to provide notice of board/committee meetings by regular mail, email or both . However, a person requesting notice has the option of choosing by which of the three methods above the person wishes to receive notice and the agency must comply with the option selected by the requester.
- Webcast meetings:
 - If an agency plans to web cast a meeting, then the notice of meeting must include a statement of the intent to web cast the meeting.

Useful BK Links

- Office of the Attorney General (2004):
 - http://ag.ca.gov/publications/bagleykeene2004_ada.pdf
- Department of Consumer Affairs (2015):
 - http://www.dca.ca.gov/publications/bagleykeene_meetingact.pdf

Questions?

