

# Bagley-Keene Open Meetings Act Training Assessment Advisory Committee

September 17, 2021



# Overview

This general training will provide an introductory overview on compliance with the Bagley-Keene Open Meetings Act (Government Code section 11120 *et seq.*).

- Policy
- Applicability
- Meetings
- Notice and Agenda Requirements
- Public Participation
- Voting
- Violations and Remedies

# Policy

“It is the public policy of this state that public agencies exist to aid in the conduct of the people’s business and the proceedings of public agencies be conducted openly so that the public may remain informed.”

- Govt. Code section 11120

# General Rule

“All meetings of a state body shall be open and public and all persons shall be permitted to attend any meeting of a state body except as otherwise provided in this article.”

-Govt. Code section 11123(a)

# Is This a “State Body?”

- “State Bodies” include:
  - **Multi-member bodies**
  - Advisory bodies
  - Delegated bodies
- “Multi-member bodies”
  - Two-part test:
    - 1) The body is **created by statute** or required by law to conduct official meetings; and
    - 2) The body **consists of two or more members.**
- Assessment Advisory Committee
  - Created by statute: Education Code § 78213(c); and
  - Consists of more than two members.

# 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 to which it pertains.” (Gov. Code § 11122.5(a))
- Bagley-Keene is not limited to “meetings” where a final decision is made!
  - “HEAR”
  - “DISCUSS”
  - “DELIBERATE”

# Serial Meetings

- “Any use of direct communication, personal intermediaries, or technological devices that is employed by a majority of the members of the state body to develop a collective concurrence as to action to be taken on an item by the members of the state body **is prohibited.**” (Gov. Code § 11122.5(b))
- Common Types of Serial Meetings:
  - Daisy Chain
  - Hub and Spoke
  - Email

# Meeting Exceptions

- Individual Contacts
  - But beware of the serial meeting!
- Social or Ceremonial Occasions
  - So long as business of the legislative body is not discussed
- Conferences and Retreats
  - So long as they are open to the public and involve subject matter of general interest to the public
- Meetings of Another Legislative Body
  - The meeting must be open to the public and properly noticed



# Teleconference Meetings

## (Normal Conditions)

- Agendas must identify each teleconference location and be posted at each location
- Each location must be open and accessible to the public and allow for public participation
  - Example: Hospital bed
  - Example: No participation by cell phone in car
- Agenda must provide an opportunity for public comment from each teleconference location
- A member of the state body must be present at each site specified in the notice of meeting
- All votes must be audible and taken by roll call

# Teleconference Meetings

## (Pandemic Conditions)

- Currently operating under the Governor's Executive Order N-29-20 & N-08-21 until September 30, 2021.
  - Suspended all the normal teleconference meeting requirements. Such as:
    - All teleconference location must be accessible to public
    - Public allowed to address the state body at each teleconference location
  - Allows instead:
    - Members' locations need not be open to public;
    - No physical location necessary; and
    - Members of public to observe and address the meeting telephonically or electronically
- AB 361 is on the Governor's desk awaiting signature – it will codify and extend the current exemptions through January 31, 2022.

# Public Notice & Agenda

- Notice of Meeting
  - Posted online and at meeting location at least 10 days in advance
  - Must be provided to individuals who request notice in writing
  - Must include date, time, and location of meeting and name, address, and telephone number of contact person for more information
- Agenda
  - Items to be discussed at the meeting
  - Each item must be sufficiently described to allow public to determine whether to attend the meeting – a brief description is sufficient
  - Closed session items must reference specific statutory authority for considering in closed session
- Notice, agenda, and supporting documents are public records and must be made available to the public
- No fees allowed (for providing notice, agenda, or the supporting documents)

# Authorized Closed Session Items

- The Bagley-Keene Act authorizes closed sessions for specific topics, including:
  - Existing or anticipated litigation
  - Real property negotiations
  - Public employee appointments, evaluation and discipline
  - Labor negotiations
  - Threats to security
- **No exemption** for embarrassing, difficult, sensitive, uncomfortable, or controversial topics.
- Prior to doing so, state body must publicly announce it is going into closed session.
- Following a closed session, the state body must provide an oral or written report out on actions taken in closed session, if any.

# Public Participation

- Public access required at all locations
  - Any person may record the proceedings via audio recorder, video recorder or still motion camera
  - No conditions may be set for attendance at or participation in a public meeting
    - Sign-in/Self-identification not required
  - All meetings must comply with the ADA
- \* Pandemic Conditions:
- It is sufficient to provide telephonic or electronic participation.
  - ADA accessibility must be provided through closed captioning on request.
  - Notice must provide instructions for virtual/telephonic attendance and for public comment.



# Special Meetings

- May be called on 48 hours notice
- Limited purposes
  - Consider pending litigation
  - Consider proposed legislation
  - Consider disciplinary action involving officer or employee, etc.
- Notice to all parties requesting prior notice
- Upon commencing a special meeting, the state body must make a finding on a 2/3 vote in open session setting forth specific facts that:
  - The normal 10-day notice would impose a substantial hardship on the state body, or
  - That immediate action is required to protect the public interest.

# Voting

- Any votes must be recorded to show the vote count.
  - The body may also vote by roll call vote.
- \* Currently, under pandemic conditions, in teleconference meetings, votes must be by roll call.

# Violations & Remedies

- Lawsuits – a prevailing plaintiff may recover attorneys fees and costs of litigation.
- Depending on the circumstances, the decision of the body may be overturned.
  - Although the body is afforded an opportunity to cure and correct violations
- Injunctions against future violations
- Criminal misdemeanor penalties may result
  - If the member attends a meeting in violation of the Act with the intent to deprive the public of information he or she knows, or has reason to know, the public is entitled to receive.



# Violations & Remedies

- Don't forget - we are conducting the public's business and expending public funds.
- **The Court of Public Opinion** is often where consequences will be meted out.
  - Relates to the public's perception about how its business is conducted.

# In Summary...

- Complicated details, but simple general rule:
  - Conduct the public's business in public...
  - By giving the public notice of matters to be discussed and an opportunity to participate.
- If in doubt, reach out to the Office of General Counsel!