

Bagley-Keene Open Meetings Act Orientation

Common Course Numbering Task Force

September 29, 2022

Overview

This general orientation session 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

Policy

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)

Applicability – Is this a “State Body?”

- “State Bodies” include:
 - “Every state board, commission, or similar multimember body of the state that is created by statute or required by law to conduct official meetings and every commission created by executive order.”
 - Govt. Code section 11121(a)
- Common Course Numbering Task Force
 - Is a multimember body
 - Created by statute (AB 1111 (Budget Act of 2021) & Education Code § 66725.5(a)(2))

Applicability – 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”
- Or limited to formally noticed meetings...

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 (i.e., *Not Meetings...*)

- Individual Contacts
 - But beware of the serial meeting!
- Social or Ceremonial Occasions
 - So long as business of the state 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 State or Legislative Body
 - The meeting must be open to the public and properly noticed

Teleconference/Virtual Meetings

- Shortly after the beginning of the COVID-19 emergency, the Governor issued Executive Order N-29-20, which suspended the “normal” teleconference meeting requirements and allowed state and local agencies to conduct meetings virtually.
- Provided that:
 - No physical location necessary;
 - Members’ locations need not be open to the public;
 - Basic obligation for notice remains, explaining the procedures for remote public participation;
 - Members of the public could observe and address the meeting virtually or telephonically; and
 - Requires roll-call voting
- SB 189 (2022), one of the Budget trailer bills signed by the Governor on June 30, 2022, extended these teleconference meeting provisions through July 1, 2023.

Public Notice and Agenda Requirements

- 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
 - Brief description of items to be discussed at the meeting in either open or closed session
 - 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

Public Notice and Agenda Requirements

- Notice, agenda, and supporting documents are public records and must be made available to the public
 - Documents, when distributed to a majority of the body by any person in connection with a matter subject to consideration at a public meeting, are public records that must be made available to the public “upon request without delay.” (Govt. Code section 11125.1)
- No fees allowed for attendance or for providing notice, agenda, or the supporting documents

Authorized Closed Session Topics

- The Bagley-Keene Act authorizes closed sessions **ONLY** 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

Authorized Closed Session Topics

- State body must publicly announce it is going into closed session.
- During the closed session, the state body may **only** discuss the items listed on the closed session agenda.
- Following a closed session, the state body must provide an oral or written report out on actions taken in closed session, if any.
 - For example:
 - The Board took action to dismiss employee #1234
 - The Board gave direction to its negotiators to sell the property located at...
 - The Board took no action on any closed session agenda item (if informational only)

Public Participation

- Public access required at all locations
- Opportunity to address the state body on each agenda item before or during discussion of the item & on matters not on agenda, but within the subject matter jurisdiction of the state body
- 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
 - Cannot prohibit criticism of state body
 - BUT: May limit time per speaker if necessary
- All meetings must comply with the Americans with Disabilities Act (ADA)

Public Participation

- * Current Rules for Pandemic Conditions:
- It is sufficient to provide telephonic or virtual participation.
- ADA accessibility must be provided through closed captioning on request.
- Notice must provide instructions for telephonic/virtual attendance and for making public comment.

Consideration of Urgency Items

- Bagley-Keene generally prohibits consideration of any item not on the posted agenda; EXCEPT:
- Urgency items:
 - Notice of an urgent item/revised agenda must be provided at least 48 hours in advance of meeting.
 - At the meeting, 2/3 of all members present (or all members if less than 2/3 are present) must determine that there is a need for immediate action and this need came to the attention of the state body subsequent to the original agenda posting.
- Notice to all members of state body and to parties requesting prior notice

Voting

- Any votes must be recorded to show the vote count.
- The body may also vote by roll call vote.
- *** Currently, in teleconference/virtual meetings held under pandemic rules, votes MUST all be by roll call.**

Violations and Remedies

- Lawsuits – a prevailing plaintiff may recover attorneys’ fees and costs of litigation.
- Depending on the circumstances, the decision of the state body may be overturned.
 - **BUT:** state body is afforded an opportunity to cure and correct violations
- Injunctions (court orders) 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 and Remedies

- Remember, in this capacity, we are:
 - Representatives of the state and the community college system
 - Conducting the public's business and expending public funds.
- **The Court of Public Opinion** is often where consequences for violations will be meted out.
 - In other words, the public's perception about how its business is conducted may be adversely impacted.

In Summary...

- Complicated details, but simple General Rule:
 - Do the public's business in public,
 - Give the public notice and an opportunity to participate.
- If in doubt, reach out to the Office of General Counsel
 - Through the Chancellor's Office representative(s) on the state body.
- Thank You!