

Bagley-Keene Open Meeting Act

Presented to the Paramedic Disciplinary Review Board
March 7, 2024

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Purpose and 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.
 - ☐ In enacting this article, the Legislature finds and declares that it is the intent of the law that actions of state agencies be taken openly and that their deliberation be conducted openly.
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Purpose and Policy

- ❑ The people of this state do not yield their sovereignty to the agencies which serve them. The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may retain control over the instruments they have created.
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California Open Meeting Laws

- ❑ The Ralph M. Brown Act: Government Code Section 54940.5, et seq. Enacted 1953. Covers "local agencies" which are defined as: "[A] county, city, whether general law or chartered, city and county, town, school district, municipal corporation, district, political subdivision, or any board, commission or agency thereof, or other local public agency."
 - ❑ The Bagley-Keene Open Meeting Act: Government Code Sections 11120, et seq. Enacted 1967. Covers "state bodies" which are defined as "[e]very state board, or 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."
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Bagley-Keene in a Nutshell

A majority of members of a state body shall not meet, either serially or all together, in one place, to address issues under the body's jurisdiction.

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State Bodies

Types of State Bodies:

☐ Advisory Bodies

- Created by the Legislature
- Created by formal action of another body
 - If fewer than two members, not covered by Bagley-Keene

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State Bodies

- ❑ Delegated Body
 - Power to act has been delegated by another body
 - ❑ Commissions Created by the Governor
 - Via Executive Order
 - ❑ Body Determined by Membership
 - A member in their official capacity serves as a representative on another body which is funded in whole or in part by the member's state body.
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When Does Bagley-Keene Apply?

→ Always! ←

- ❑ From the time of appointment, even though service on the body has not commenced, until the time service has completed.
 - Any person appointed or elected to serve as a member of a state body who has not yet assumed the duties of office shall conform his or her conduct to the requirements of this article and shall be treated for purposes of this article as if he or she has already assumed office.
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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.
 - ❑ A majority of the members of a state body shall not, outside of a meeting authorized by this chapter, use a series of communications of any kind, directly or through intermediaries, to discuss, deliberate, or take action on any item of business that is within the subject matter of the state body.
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Considerations & Exemptions

- ❑ Public Contact
 - It is ok to communicate with members of the public.
 - Problems arise when the public individual contacts a quorum of members.
 - Safe harbor – if the contact has not been solicited or orchestrated
 - Policy consideration – is such contact outside of a properly noticed meeting advisable?
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Considerations & Exemptions

- ❑ Social Gatherings / Conferences and Retreats
 - Purely social gatherings are exempt from Bagley-Keene; however, topics within the jurisdiction of the state body are not to be discussed.
 - Conferences must be open to the public and involve subject matter of general interest to persons or bodies in a given field.
 - Topics within the jurisdiction of the state body should still not be discussed.
 - Conferences such as strategic planning sessions are not exempt.

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Notice & Agenda Requirements

- ❑ Notice and the agenda of a meeting must be made available at least 10 days prior to the meeting.
 - Must be sent to persons that have requested it
 - Must also be posted on the internet
 - Must state time and place of the meeting
 - Include name, phone number, and address of contact person
 - Must comply with the Section 202 of the ADA to be available in alternative formats
 - Location must also be accessible
 - Must include a brief description of each item of business to be transacted or discussed
 - Applies to both open and closed meetings
- ❑ The notice and agenda must provide sufficient information so as to allow individuals to decide if they want to spend the time (and money) to attend the meeting to provide input.

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Types of Meetings

- ❑ Regular
 - Those occurring under normal, ordinary circumstances, with proper 10-day notice
 - Two circumstances where agenda items can be added after the 10-day notice for a regular meeting has posted:
 - Immediate action
 - Requires 48 hours notice
 - Where the topic to be added requires immediate action and came to the attention of the body after the meeting notice was posted.
 - Requires a 2/3 vote or unanimous vote if 2/3 of the members are not present
 - The body must make a specific finding that the 10-day notice would impose a substantial hardship on the body or that immediate action is required to protect the public interest and must provide a factual basis for such finding.
 - Emergency
 - Extremely rare instances where there exists a crippling disaster or work stoppage that would severely impair public health and safety.
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Types of Meetings

- ❑ Special
 - Limited purposes - Pending litigation, legislation, licensing matters, certain personnel actions, real estate transactions
 - 48-hour notice required
 - Provide notice to newspapers of general circulation, TV and radio stations
 - Factual basis for findings of hardship, public interest must be provided
 - 2/3 vote with articulable facts in support
 - ❑ Emergency
 - Very rare - crippling disaster or work stoppage would severely impair public health and safety
 - 1 hour notice of open meeting
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Public Participation

- ☐ No conditions may be imposed for public attendance at a meeting
 - ☐ Sign in sheets
 - While not prohibited by the Act, notice must be clearly given that signing in is voluntary
 - Likewise, an individual does not need to self-identify in order to speak
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Public Participation

- ☐ Building security
 - Security measures require identification to gain admittance to a government building are permitted so long as the information is not shared by security personnel with the state body
 - ☐ Members of the public are entitled to record and/or broadcast meetings unless to do so would constitute a persistent disruption
 - ☐ Place and manner of meeting must be non-discriminatory
 - ☐ No fee for attendance may be charged
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Teleconferences

- ☐ Must provide a means by which the public may remotely hear audio of the meeting, remotely observe the meeting, remotely address by the body, or attend the meeting
 - Posted agenda must include:
 - Teleconference telephone number
 - Internet website or online platform
 - Physical address for each teleconference location
 - Access must be the same for the public as for the members
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Teleconferences

- ☐ Public participation must be ADA compliant
 - ☐ A member of the body must be physically present at each noticed teleconference location
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Alternative Teleconference Meeting Effective January 1, 2024

- ☐ Majority of members must be physically present at the same publicly noticed location
 - ☐ Other members in excess of the majority may either:
 - Appear remotely from private locations, or
 - Via a publicly noticed location
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Alternative Teleconference Meeting Effective January 1, 2024

- ☐ Remote location appearance requirements:
 - Location of remotely appearing board member(s) shall not be publicized
 - Remotely appearing board member must disclose any other individuals 18 years or older present in the room with them and the general nature of the relationship with any such individuals.
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Alternative Teleconference Meeting Effective January 1, 2024

- ❑ Narrow Exception to Requirement that majority be present at a single site:
 - If less than a majority are present at a single site, a member attending from a private remote site can count toward the majority needed to hold the meeting if:
 - The member has a disability that cannot otherwise be reasonably accommodated except through remote participation
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Alternative Teleconference Meeting Effective January 1, 2024

- The member must notify the board at the beginning of the meeting or earlier if possible and
 - Give a general description of not more than 20 words that does not divulge any confidential medical information of the need to participate remotely
 - The board votes to approve the remote appearance and allow the member to count toward the majority needed to hold a meeting
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Teleconferences

- ☐ Members must appear on screen
 - ☐ Votes are to be taken by rollcall
 - ☐ Operative until January 1, 2026
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Access to Records

- ☐ The public is entitled to have access to records of the state body
 - Materials provided prior to or during the meeting must be made available to members of the public
 - ☐ The California Public Records Act applies to state body records
 - If a record is exempt from disclosure under the CPRA then the record need not be disclosed to members of the public
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Closed Sessions

Only allowed under limited circumstances:

- ☐ Personnel
 - Only designated employees of the state body
 - Board members are not employees
 - ☐ Pending Litigation
 - But only if the discussion in open session would prejudice the position of the agency in the litigation
 - Attorney-client privilege
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Closed Sessions

- ☐ **Deliberative Exception**
 - To Deliberate on decisions in a proceeding under the Administrative Procedures Act
 - ☐ Real Property Transactions
 - ☐ Security Exception
 - Criminal, terrorist threat
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Closed Session Procedure

- ☐ Must be listed on the properly noticed agenda
 - ☐ Items to be considered in closed session must be properly listed on the agenda with the appropriate statutory provision authorizing the closed session
 - ☐ Prior to convening in closed session, the state body must publicly announce those items that will be considered
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Closed Session Procedure

- ☐ After the completion of the closed session the body must reconvene in public open session
 - Report of action only required when decision to hire or terminate an individual
 - ☐ Minutes are required but are confidential and disclosable only to the board or a reviewing court
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Remedies for Violation of the Act

- ☐ Decision of body may be overturned
 - ☐ Violations may be stopped or prevented
 - ☐ Costs and fees may be awarded
 - ☐ Misdemeanor penalties
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Thank You For Your Time

Questions?




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