

Bagley-Keene Open Meetings Act

{ State Bar Training Sessions
{ January 15, 2016
February 17, 2016

- ⌘ "Let the people know the facts, and the country will be safe." Abraham Lincoln
- ⌘ "Secrecy and a free, democratic government don't mix." Harry Truman
- ⌘ "Sunlight is said to be the best of disinfectants."
Louis D. Brandeis

Bagley-Keene Open Meeting Requirements
are Based on the Concept of
Sunshine in Government.

Legislative Intent

“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.

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.”

- ∞ Do the Public's Business in Public
- ∞ Give the Public Notice and an Opportunity to Participate

Purpose of Bagley-Keene

Board of Trustees Subject to Open Meeting Requirements Since 1985

- Business and Professions Code section 6026.5
- *“Every meeting of the board shall be open to the public...”*
- Closed meeting exceptions set forth in statute:
 - Consultation with counsel re litigation
 - Involuntary enrollment of members
 - Qualification of judicial candidates
 - Appointment, employment or dismissal of employee, consultant or officer
 - Disciplinary investigations
 - Appeals to board of Board of Legal Specialization Decisions
 - Appointments to or removals from committees
 - Joint meetings with Article VI agencies

SB 387 Made State Bar Subject to Bagley-Keene

- Amended Business and Professions Code section 6026.7, effective April 1, 2016
- *“The State Bar is subject to the Bagley-Keene Open Meeting Act. . . and all meetings of the State Bar are subject to the Bagley-Keene Open Meeting Act.”*
- Specific exemptions for JNE Commission and Committee of Bar Examiners

State Bar Subject to Bagley-Keene

- ⌘ Every state board or commission created by statute or executive order;
- ⌘ Board or commission that exercises authority delegated by a state body;
- ⌘ **Advisory boards, committees or commissions of 3 or more persons, created by formal action of a state body or member thereof;**
- ⌘ Official representatives of state bodies covered by Bagley-Keene serving on other boards or commissions (including those organized by a private corporation) that are supported in whole or in part, by funds provided by the state body.

Bodies Covered by BK

& “Any congregation of a majority of the members” of a body “at the same time and place to hear, discuss, or deliberate upon any item” within the jurisdiction of the body.

What is a Meeting?

- ⌘ Any use of 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.
- ⌘ A majority of members of a body may not use any series of communications outside of a properly noticed meeting. This becomes a prohibited serial meeting.

More on Definition of Meeting



- ⌘ Daisy Chain
- ⌘ Hub and Spoke
- ⌘ Emails
 - ⌘ Avoid “reply all”
 - ⌘ Do not include a quorum



- ⌘ Serial Briefings
- ⌘ Telephone Calls/Messages

- ⌘ Exception: Prohibition on serial meetings does not prohibit staff from engaging in separate conversations or communications outside of a meeting to answer questions or provide information.
 - ⌘ As long as that staff member does not communicate to members of the body the comments or position of other members.

Serial Meetings Prohibited

- ⌘ Individual contacts between board members and others that do not otherwise violate the Act.
- ⌘ Attendance of a majority of the members of a body at a conference or similar gathering open to the public.
- ⌘ Open and publicized meeting regarding a topic of state concern organized by an outside entity.
- ⌘ Purely social or ceremonial occasion as long as business is not discussed among the members of a body.
- ⌘ Majority of the members of a body can attend an open and noticed meeting of a standing committee as long as they do not participate.

Exceptions to Meeting Definition

Meetings May Be Held by Teleconference if:

- there is audio or video or both connecting locations.
- the notice and agenda identify the remote location(s).
- the remote location(s) is accessible to the public.
- all votes are by roll call.
- at least one member physically present at location noticed for meeting.
- all locations comply with the Bagley-Keene Act, including allowing public participation.
 - Each location identified in notice, open to public and allow for public participation.
- Bagley-Keene does not prohibit the Bar from providing the public additional locations or call-in numbers.

Teleconference Meetings

- ❖ General Rule = 10 Days Notice to persons who request notice and posted on website.
 - ❖ Notice must include specific agenda
- ❖ Notice shall include contact person for questions.
- ❖ Only items on agenda can be discussed, unless a late add is justified with required finding made.
- ❖ Materials distributed in connection with meeting are public records, unless an applicable exception is available (public interest balancing test/deliberative process excluded).
 - ❖ Must be available at the meeting if prepared by State Bar or after the meeting if prepared by a third party.

Properly Noticed Meeting

- ✓ Agenda must be posted 10 days in advance with brief description (20 words or less) of each item of business.
 - ✓ Must provide public reasonable notice of topics to be discussed.
 - ✓ Our IT Department is designing a paperless system for posting and notice.
- ✓ Must allow public comment on items on the agenda prior to action.
- ✓ All meetings must be ADA compliant.
- ✓ Public has right to record/photograph.
- ✓ Reasonable restrictions are permitted.

Agendas and Public Comment

⌘ Action on items not on the agenda may be taken only if:

⌘ 2/3 of body makes finding that there exists immediate need to take action that came to the attention of the body subsequent to the timely posting of the agenda.

Notice Exception: Action on Items Not on Agenda

- ⌘ Special Meetings (with less than 10 days notice) can be held only to discuss specified topics.
- ⌘ Meeting must begin with finding made by 2/3 of the body that:
 - ⌘ the 10 day notice period would impose a substantial hardship on the body; or
 - ⌘ where immediate action is required to protect the public interest.
- ⌘ At least 48 hours notice required.
- ⌘ Allowed topics:
 - pending litigation;
 - proposed legislation;
 - issuance of a legal opinion;
 - disciplinary action against an officer or employee;
 - real estate purchase or lease;
 - license examinations and applications;
 - response to a confidential final draft audit report; and
 - appointing an interim executive officer.

Notice Exception: Special Meetings

- ⌘ Limited to Specified Grounds, including:
 - appointments,
 - preparation, approval, grading and administration of exams,
 - unwarranted invasion of privacy of individual licensee or applicant,
 - advice of counsel re pending litigation,
 - awarding of honorary degrees, gifts bequests.

- ⌘ Still Requires Specific Notice (citing applicable statutory authority) and Announcement in Open Session.

- ⌘ Only Items Specifically Noticed on Closed Agenda May Be Discussed in Closed Session.
 - ⌘ Purpose ≠ General ability for candid discussion.

- ⌘ Closed session exceptions in section 6026.5 also available.

Closed Sessions

⌘ Court of Public Opinion

⌘ Civil Action

⌘ Exposure to Attorneys Fees and Costs for Violation

⌘ Criminal Action

⌘ Willful violations can be Misdemeanors

Enforcement

& Complicated Details, but Simple General Rule

- Do the Public's Business in Public
- Give the Public Notice and an Opportunity to Participate

& When in doubt, ask for help

Conclusion