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Introduction to the Bagley-Keene Open Meeting Act

This memorandum provides a brief overview of the Bagley-Keene Open Meeting Act (“the Act”), set forth in Government Code sections 11120-11132.

In passing Bagley-Keene, the Legislature intended to provide public access to the governmental decision-making process. The Act includes rules designed to ensure that state boards and commissions meet publicly at locations open to the public, post agendas that can’t be deviated from without prior notice to the public, and refrain from contemplating items of interest outside of such public meeting and agenda requirements. The intention behind these rules is to give the public a seat at the decision-making table, and to prevent collective decision-making from occurring in private or behind closed doors.

Operating under the requirements of the Act can sometimes seem cumbersome for both board members and staff. The rules provided by the Act can sometimes make it difficult for board members to communicate with each other and can make some processes seem inefficient. However, it was the Legislature’s intent to provide the public with the ability to monitor and participate in the decision-making process of multi-member bodies, and compliance with these rules should help accomplish that goal.

Member Responsibilities

The Act begins to apply to new members at the time of their election or appointment, even if they have not yet started to serve. (Gov. Code, § 11121.95.) A body that falls under the Act must provide its new members with a copy of the Act. (Gov. Code, § 11121.9.)

Outside of an open and public meeting, the Act expressly prohibits a majority of the members of a state body to communicate, in any manner, about a topic of interest to that state body. (Gov. Code, § 11122.5(b).) For example, a pre-meeting conference-call among a majority of members would be prohibited, and an e-mail chain sent among a majority of the members to discuss a topic of interest from an upcoming or past meeting would likewise be prohibited.

Any member who intends to deprive the public of information to which the member knows, or has reason to know, the public is entitled could be guilty of a misdemeanor. (Gov. Code, § 11130.7.)

Meetings

A meeting occurs when a majority of a body convenes to address issues under the body's jurisdiction. (Gov. Code, § 11122.5.) For example, if a body has 15 members, and 8 members meet to discuss an issue in person, over the phone, or via e-mail, that discussion would constitute a meeting.

All meetings must be open to the public, and no conditions to entry can be imposed. (Gov. Code, § 11124.) Anyone must be welcome, and removals can only occur for specific disruptions. No registration can be required, and if sign-in sheets are used, they must specifically state that they are optional and that anonymous attendance is permitted.

Members of the public are entitled to record and to broadcast the meetings (via audio and/or video), unless to do so would constitute a persistent disruption. (Gov. Code, § 11124.1.)

The notice and agenda provisions require bodies to send notice of its meetings to persons who have requested it, as well as to post such notice on the Internet. (Gov. Code, § 11125(a).) At least ten (10) days prior to each meeting, bodies must prepare this notice along with an agenda of all items to be discussed or acted upon at the meeting. (Gov. Code, § 11125(b).)

The notice needs to state the time and the place of the meeting, provide the Internet address for a copy of the notice, and give the name, phone number, and address of a contact person who can answer questions about the meeting and the agenda. (Gov. Code, § 11125(a).)

The agenda needs to contain a brief description of each item to be acted on or discussed at the meeting, which generally need not exceed 20 words in length. (Gov. Code, § 11125(b).)

The public must be afforded an opportunity to speak or otherwise participate either before or during the consideration of each agenda item. (Gov. Code, § 11125.7.)

Upon request by any person with a disability, the notice and agenda must be made available in appropriate alternative formats. (42 U.S.C. § 12132.) The notice must also contain information regarding the manner in which and the deadline by which a request for any disability-related modification or accommodation, including auxiliary aids or services, may be made by a person requiring these aids or services in order to participate in the meeting.

Teleconference

Members of a state body may attend a meeting of that body via teleconference (audio, or both audio and visual), but must do so from locations accessible and open to the public. (Gov. Code, § 11123.)

Each teleconference location must be identified in the notice and agenda, and each site must have posted such notice ten (10) days prior to the meeting. (Gov. Code, § 11123(b)(1)(C).)

All votes taken during a teleconferenced meeting shall be by roll call (“yeas” and “nays”), with a record of how each member votes. (Gov. Code, § 11123(b)(1)(D).)

The state body can allow for members of the public to view, listen to, or interact via electronic means, such as calling into the teleconference or viewing a feed over the Internet, without having to be physically present at a meeting or teleconference location. (Gov. Code, § 11123(b)(2).)

For each item considered on the agenda, the public must be afforded an opportunity to speak or otherwise participate at each of the teleconference locations. (Gov. Code, § 11123(b)(1)(C).)

Public Records

For each item on which a vote is taken, a record must be kept of the result and how each member present voted on that action item. Secret ballots are prohibited. (Gov. Code, § 11123(c).)

Under the Act, the public is entitled to have access to the records of the body. (Gov. Code, § 11125.1.) In general, a record includes any form of writing, including e-mails and handwritten notes. When materials are provided to a majority of the body either before or during the meeting, they must also be made available to the public without delay, unless the confidentiality of such materials is otherwise protected. (Gov. Code, § 11125.1(a).)

Any records provided to the public must be available in appropriate alternative formats upon request by a person with a disability. (42 U.S.C. § 12132.)

If a body has received a request for records, the Public Records Act allows for the body to charge for duplication, limited to the direct cost of such duplication. (Gov. Code, §§ 6250-6270, 11125.1(c).)

Emergency Meetings

In rare emergency instances, such as a crippling disaster or a work stoppage that would severely impair public health and safety, an “emergency meeting” can be held. (Gov. Code, § 11125.5.) Emergency meetings require a one-hour notice to the media and must be held in open session. The Act also sets forth a variety of other technical and procedural requirements that must be satisfied.

Special Meetings

“Special meetings” are meetings held without a 10-day notice. (Gov. Code, § 11125.4.) Special meetings require at least a 48-hour notice to the media, along with posting on the Internet.

The purposes for which a body can call a special meeting are quite limited. Examples include pending litigation, legislation, licensing matters, and certain personnel actions.

At the commencement of a special meeting, the body is required to make a finding that the 10-day notice requirement would impose a substantial hardship on the body or that immediate action is required to protect the public interest. The finding must be adopted by two-thirds vote and must contain facts that support it. If all of these requirements are not followed, then the body cannot convene the special meeting and the meeting must be adjourned.

Closed Sessions

Closed sessions must follow the procedures and restrictions outlined in the Act and may only be held for specific reasons enumerated generally under the Act as follows:

Personnel Matters (Gov. Code, § 11126(a).)

Examination Matters (Gov. Code, § 11126(c)(1).)

Matters Affecting Individual Privacy (Gov. Code, § 11126(c)(2).)

Administrative Disciplinary Matters (Gov. Code, § 11400, *et seq.*; § 11126(c)(3).)

Board of Accountancy Matters (Gov. Code, § 11126(f)(3).)

Pending Litigation (Gov. Code, § 11126(c)(1).)

Response to Confidential Final Draft Audit Report (Gov. Code, § 11126.2.)

Threat of Criminal or Terrorist Activity (Gov. Code, § 11126(c)(18).)