

Open Meetings and Communication

Presented to the First Eight Members of the
Citizens Redistricting Commission
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Topics for Today



- ❑ Requirements of Bagley-Keene
- ❑ Avoiding a violation of Bagley-Keene

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Purpose of Bagley-Keene

“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.”

- ❑ To make government decision makers accountable to the people they serve.
- ❑ To give the public a voice in the decision making process.

A Little Muckraking Never Hurt

- ❑ 1951: *San Francisco Chronicle* exposes closed door meetings
- ❑ 1953: Legislature responds by enacting local government open meeting act (Brown Act)
- ❑ 1967: Legislature requires state bodies to hold open meetings (Bagley-Keene)



Central Requirement

- **Meetings of state bodies** must be open to the public



Who is Subject to Bagley-Keene?

- ❑ Almost every state board, commission, or similar multi-member body
- ❑ Advisory boards, or commissions, of 3 or more persons
- ❑ Delegated committees, even if made up of less than 3 members



Bagley-Keene Applies to the Commission

- ❑ Applies to the full 14-member commission
- ❑ Applies to the first eight members
- ❑ Applies to advisory bodies of 3 or more if created by the commission
- ❑ The law is a “floor” not a “ceiling”

The Definition of “Meeting” is Key

“Any congregation of a majority of the members ... 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...”



“Meeting” is Defined Broadly

- Hear
- Discuss
- Deliberate
- Act

Must Provide Access to All

- ❑ Everyone can attend
- ❑ Must be ADA accessible
- ❑ Media
- ❑ Right to record
- ❑ Can't be required to sign in

Providing Notice

- ❑ Bagley-Keene: 10 days
 - ❑ Meetings of the first eight commissioners (10 days)

- ❑ Voters FIRST Act: full commission, 14 days notice
 - ❑ Limited exception in September 2011 (3 days)
 - ❑ Prop. 20 changes deadline to August, but doesn't change 3-day requirement to August

Voters FIRST Act Requirements

- ❑ Requires an outreach program to solicit broad public participation
- ❑ Public hearings **before** drawing maps
- ❑ Public display of maps for 14 days
- ❑ Take public comment on maps for at least 14 days

Special Exceptions to Notice Rqts.

□ Special Meeting

- For very limited purposes, i.e. pending litigation, disciplinary action
- 48 hours notice-provided to newspapers

□ Emergency Meeting

- Crippling disaster
- Work stoppage that may harm the public health and safety
- One hour notice

Publishing an Informative Agenda

- ❑ Brief description of each item
- ❑ “Specific”
- ❑ Take care not to tie your hands by being so specific that you cannot consider other options!
- ❑ No deliberation on items not on agenda
- ❑ Work closely with staff on developing the agenda

Taking Public Comment Before Acting

- Public comment must be allowed on each agenda item before the state body acts on that item.
 - Ok to impose time limitations on speakers
 - Speakers can't be required to sign in to speak or attend
 - Explicit right to criticize the state body

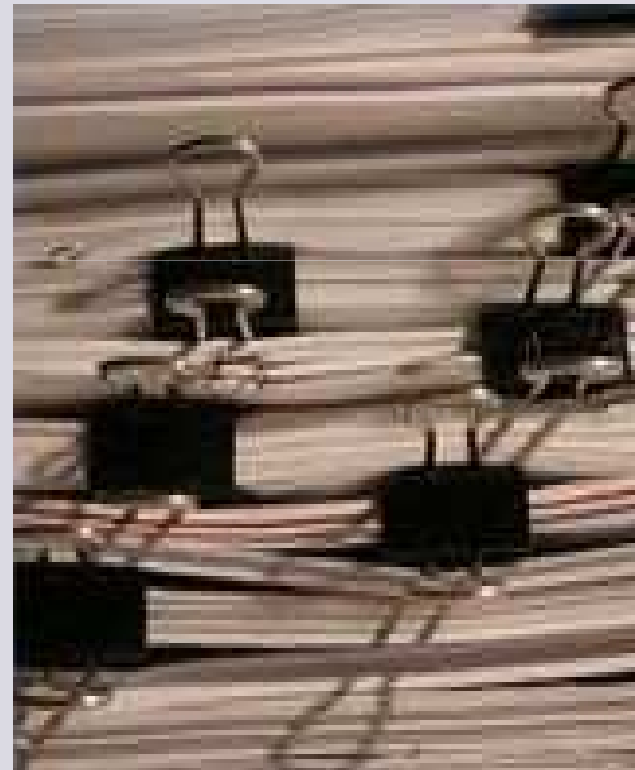
Public Comment on Issues not on the Current Agenda

- ❑ Customary to allow for public comment on items not on the agenda
- ❑ No deliberation on items not on the agenda



Making Written Materials Available

- ❑ Written materials provided to the state body **prior** to the meeting must be made available at the meeting
- ❑ Maps of the commission must be available 14 days prior to acting



Holding a Closed Session

- ❑ Limited to specific situations
- ❑ Agenda must indicate reason for closed session
- ❑ At least one staff member must be present
- ❑ Minutes must be taken; may be required to record
- ❑ Must report on any action taken in closed session

Special Rules Apply to Telephone Meetings

- ❑ The location where members will be calling from must be noticed on the agenda.
- ❑ Location must be ADA accessible and the meeting audible.



Telephone Meetings cont'd.

- ❑ At least one member must be at the telephonic location.
- ❑ Vote by roll call.
- ❑ No calling in on cell phones while driving!

Avoiding a Violation of Open Meeting Laws

- Clear prohibition in the law:
- -"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."

Serial Meeting

- ❑ A chain of communications among a majority, may violate Bagley-Keene
- ❑ Emails, phone calls, text messages



Serial Meeting: “Wheel and Spoke”



- Person at the center of the wheel facilitates a serial meeting among those at the end of the spokes

A Violation Occurs

- ❑ When a majority communicate among themselves
- ❑ Directly or indirectly
- ❑ Outside of an open meeting
- ❑ Even if they do not reach consensus (AB 1494)

Tips for Avoiding a Bagley Keene Violation

- ❑ Members of a state body should not communicate among themselves outside of a public meeting regarding an item of business within their jurisdiction
- ❑ Staff who assist the members of a state body should be trained appropriately so they do not act as conduits

Serious Penalties for a Violation

- ❑ A violation of Bagley-Keene may result in misdemeanor criminal prosecution
- ❑ Actions taken in violation of the law may be void
- ❑ Attorney's fees
- ❑ Harm to the agency's reputation

Communication Among Commissioners Outside of a Meeting

- What can we talk about?
 - Members may have purely social conversations with one another.
 - Members may attend a conference with other members in attendance, as long as they do not discuss matters within their jurisdiction.

Communicating with the Public and Other Public Officials

- Voters FIRST Act imposes special rules:
 - No communications regarding redistricting outside of open meetings
 - Restrictions on communications with legislators, members of Congress, members of the State Board of Equalization, or their representatives, regarding selection of the final six members

Using Technology to Promote Access

- ❑ Blogging
- ❑ Webcasting
- ❑ Twitter



I'm just
tweeting
to tell you
I *blogged.*

Helpful resources

- Handy Guide to the Bagley-Keene Open Meeting Act

(http://ag.ca.gov/publications/bagleykeene2004_ada.pdf)

- Citizen Media Law Guidance

(<http://www.citmedialaw.org/legal-guide/california/open-meetings-laws-california>)

Test your Understanding



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Question 1

Commissioner A wants to attend the upcoming meeting of a state body. However, she needs to be traveling when the meeting is held. If she calls in to the meeting on her cell phone, while driving to the airport, is her attendance consistent with the requirements of Bagley Keene?

- A. Yes
- B. No

Question 2

May a member of the public use his or her iPhone or other recording device to record a state body meeting and post it on YouTube?

- ❑ A. Yes
- ❑ B. Yes, but only if he or she intends to litigate the matter
- ❑ C. Yes, but only if advance notice is given to the Secretary
- ❑ D. No

Question 3

I offer my comments during the time allotted for public comment on items not on the agenda at every meeting, and the members don't respond except to say, "Thank you." Why?

- ❑ A. They are not listening.
- ❑ B. They disagree with you and don't want to argue in a public setting.
- ❑ C. The issues you are commenting on have not been properly placed on the agenda for discussion, so it would be inappropriate for the members to deliberate on the issues you raise.

Questions?



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Lunch Break



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