



SHAPE CALIFORNIA'S FUTURE

Bagley-Keene Open Meeting Act

Government Code § 11120 ET SEQ.

July 21, 2020

For questions regarding this meeting, please call the California State Auditor
at 833-421-7550 or email shapecaliforniasfuture@auditor.ca.gov

Congratulations on your appointment

Having observed each of your interview with the Applicant Review Panel, I know first-hand how qualified each of you are to take on this tremendous challenge.

The California Citizens Redistricting Commission is a hallmark of our state's commitment to open and transparent government.

As part of that tradition of open and transparent government, not only are you charged with drawing fair electoral maps, you are required to do so in open and public meetings subject to the Bagley-Keene Act.

I am here to give you an overview.

People's Right to Open Government

Right to access to information concerning the conduct of people's business enshrined in the California Constitution (art. I, § 3)

Ralph M. Brown Act added 1953

Bagley-Keene Open Meetings Act added 1967

California Public Records Act added 1968

California Political Reform Act added 1974

(See also federal Government In The Sunshine Act and Freedom of Information Act)



General Policy Statement

“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 conducted openly so that the public may remain informed.”

(§11120)



CRC: First 8

Legally required training:

- All meetings of the CRC, including the First 8, are subject to the Act (2 CCR § 60858)
- Including this training (2 CCR § 60855)

CRC, including the First 8, as a **multi-member state body** are subject to the terms of the Act by definition

- § 11121(a)



State Body

Definition:

Multimember body of the State

- Created by statute or required by law to conduct official meetings
- Created by executive order
- Delegated authority by a state body

Includes sub-bodies such as advisory boards where a member is serving as a representative of a parent body

Includes State Bar, UC Regents, and CSU Trustees

(\$11121)



Meetings

Notice and Agenda

- For all multimember bodies:
 - Standard: 10 days (§11125(a))
 - Special meetings: 48 hours (§11125.4)
 - Emergency meetings: As soon as practicable (§11125.5)
- CRC: Special rules for map display
 - 14 days for receipt of public input
 - 3 days in August 2021



Meetings, Cont.

Open and Public

- Accessible to the public
- Public may comment on any item
- ADA applies
- COVID-19 waivers



Definition of Meeting

Any **congregation** of a **majority** of a state body to hear, **discuss**, or deliberate upon **any** item within the body's **jurisdiction**.

(§11122.5(a))

If your state body has **8 members**, then **any 5 are a majority**, and any discussion of any item within that body's jurisdiction is a **meeting**.



What is **not** a meeting?

Individual contacts between members which do not constitute a serial meeting, unless they communicate daisy chain style

Attendance at **conferences, seminars, etc.**, which are open to the public, so long as they do not discuss matters within the body's jurisdiction

Attendance at **social or ceremonial events** where they do not discuss matters within the body's jurisdiction.

Upshot: do not discuss matters within your body's jurisdiction outside of a regular noticed meeting.

(§11122.5(c))



Telephones and Wheels

Telephone Game:

- Commissioner A tells Commissioner B tells Commissioner C tells Commissioner D etc.
- Even though majority never in the same room together, if **information is passed from member to member**
- This may constitute a **meeting**
- Can be through intermediaries (such as secretaries or assistants); need not be members themselves

Hub and Spoke:

- Commissioner A sends redistricting question to Counsel. Counsel thinks this question is likely to come up again so she responds to Commissioner A's question with cc to Commissioners B, C, D, E, etc.
- If this reveals Commissioner A's thinking on redistricting issue, this **may constitute a meeting**



Serial meetings

A **series of communications** among a **majority** of members of the body on the subject of any item **within its jurisdiction**

Communications can be through **any means**

- Phone
- Email
- Text
- Social media posts

Includes communications by **intermediaries**

Be wary of “sidebar” discussions and informal caucuses

(§11122.5(b))

An additional requirement for CRC

“Commission members and staff may not communicate with or receive communications about redistricting matters from anyone outside a public hearing.”

(Voters FIRST Act, Gov. C. § 8253(a)(3))



Open and public

Public must be given the opportunity to directly address members on agenda items

Preconditions for participation are **prohibited** (§11124)

- Includes attendance or sign-in sheet
- Must be voluntary

Must be in a place that is **accessible to public** (§11131)

- No discrimination
- No entry fees

Open and public, cont.

Public participation by teleconference allowed, if specified conditions met. (§11123)

Public allowed to record the proceedings (§11124.1)

ADA applies (§11123.1)

COVID-19

However, in response to the COVID-19 pandemic, Governor Newsom issued Executive Orders which temporarily waived some requirements of Bagley-Keene:

- Allowed for teleconference meetings where public need not be physically present
- ARP interview and final meeting: no members of the public in the room
- Notice and agenda waivers
- Balance health precautions with spirit of open government



Notice and Agenda

Notice must be posted on web **10 days prior to meeting**

Copy must be provided to anyone who requests that notice in writing

Notice shall include a **specific agenda** for the meeting

- Brief general description (20 words or less) of each item
- ADA compliant alternative formats upon request

*Special 14-day requirement for CRC when displaying preliminary maps;

**3-day rule in August 2021 (§8253)

(§11125)



Notice and agenda, cont.

No item can be added to agenda, except under very limited circumstances (§11125.3):

- Topic meets criteria for emergency meeting
- Immediate action needed, body notified after 10-day limit, 2/3 approval

Closed sessions (§11126):

- General description of item to be discussed
- Citation of legal basis to hear that item in closed session

Special and emergency meetings

Special meetings: where 10 day notice requirement would impose substantial hardship on the state body or when immediate action is required to protect the public interest.

- Specified bases, including pending litigation, proposed legislation, or an audit report response
- 48 hour notice
(§11125.4)

Emergency meetings: in case of an emergency situation where prompt action is necessary due to the disruption of public facilities

- 1 hour notice
- Post hoc posting of minutes, votes, and actions taken for 10 days, on web and in a public place
(§11125.5)

Closed Sessions

Body can hold closed sessions to discuss certain specified items*

- Personnel and disciplinary matters
- Security matters
- Litigation
- Consider its response to a CSA draft audit report
- Many of these bases are specific to a particular body

Note the overlap with the reasons to hold a special meeting

- Legislature has found that certain business is sensitive (time or subject matter)

Note the overlap with CPRA

*BUT, these are not perfect overlaps, so, as always, check with counsel



Closed Sessions, cont.

Before: Body must disclose general description of the items discussed and can only discuss those matters (§11126.3)

During: Minute book must be kept – not a public record and shall be kept confidential (§11126.1)

After: Body must “report out” whether action taken in closed session (§11126.3)

Closed sessions can only be called during regular and special meetings, not emergency meetings (§11128)



Violations: Remedies and Penalties

AG, DA, or any interested person may sue for **injunctive relief** to stop or prevent violations of Bagley-Keene (§11130)

- That is, to get a court to order body to obey
- Court can order body to audio record its closed sessions

Any interested person may sue to nullify any action taken in violation of Bagley-Keene (§11130.3)

Costs and attorneys' fees to the prevailing party

Intentional violation of Bagley-Keene is a **misdemeanor** (§11130.7)

The real penalty is the **damage to public trust** in the body



Bagley-Keene And California Public Records Act

These laws work hand-in-hand to keep public informed

Violation of one may implicate violation of the other

Materials provided to panel in connection with any matter considered must also be provided to the public without delay

CPRA 6255 balancing test not available to materials provided in open meeting to body

(§11126)



Immediate application

Members of a state body who have been appointed to a state body, but who have not yet assumed their duties, must comply with Bagley-Keene

(\$11124.95)



A copy of one's own

Each state body shall provide a copy of the act to each member of the state body upon his or her appointment to membership or assumption of office

(§11121.9)





Questions?

Questions about this presentation or general questions?

*Send your questions through your counsel,
Amanda Saxton*