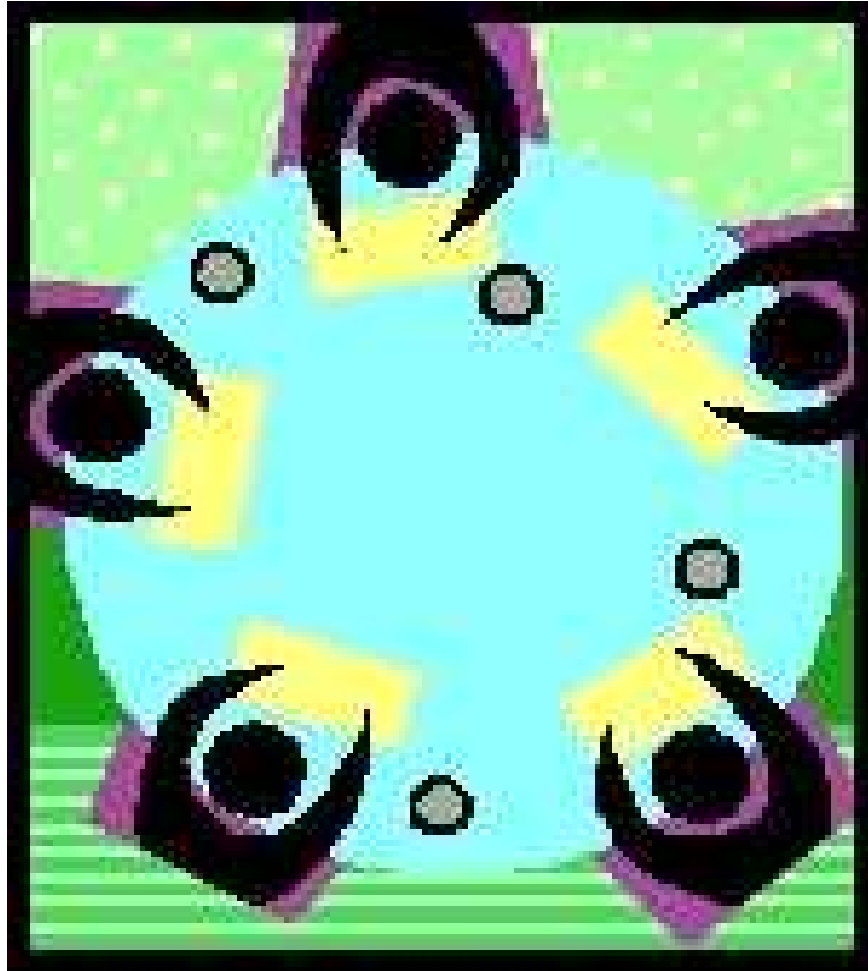


**A SIMPLE GUIDE**  
**TO THE BAGLEY-KEENE OPEN MEETING ACT**



Prepared by the Legal Division of the  
California Public Utilities Commission (CPUC)

As a Resource for Members of the Public

Contributors: Helen Mickiewicz, Joel Perlstein, & Suman Mathews

October 2011

**I. The Bagley-Keene Open Meeting Act (“Act”) is codified in the California Government Code, beginning at Section (“§”) 11120.**

All references to sections in this Guide, not otherwise specified, are to sections in the Government Code.

**II. Purpose of the Bagley-Keene Open Meeting Act**

The purpose of the Bagley-Keene Open Meeting Act is to ensure that public agencies conduct the people’s business openly so that the public may observe and be informed. (§ 11120)

**III. Applicability of the Act**

**A. The Act applies to any “state body”. (§ 11121)**

**B. A state body is defined to include all of the following:**

1. **Every state board, or commission, or similar multimember body of the state that is created by statute or required by law to conduct official meetings.**
  - (a) A “multimember body” is two or more people.
2. **A board, commission, committee, or similar multimember body that exercises any authority of a state body delegated to it by that state body.**
3. **An advisory board, advisory commission, advisory committee, advisory subcommittee, or similar multimember advisory body of a state body, if:**
  - (a) It was created by formal action of the state body or of any member of the state body, AND
  - (b) If the advisory board that was created consists of three or more people.
4. **If an advisory body created by formal action of another body has only two members, it is not covered by the Act.**

## IV. Meetings

### A. What is a meeting?

1. A meeting occurs when a majority of the members of a state body gathers at the same time and place, or is joined electronically or telephonically, to
  - hear,
  - discuss, or
  - deliberateabout any item within the subject matter jurisdiction of the body. (§ 11122.5 (a))
2. *A meeting includes a gathering where a majority of the members of a state body are discussing, debating, or voting on issues or a gathering where they are merely receiving information.*
3. Certain gatherings are not considered meetings, even though a majority of the members of the state body are gathered at the same time and place. (§ 11122.5 (c))
  - (a) So long as the members of the body do not discuss privately among themselves business of a specific nature that is within the jurisdiction of the agency, then the following are *not* “meetings”:
    - (1) The attendance of a majority of the members of a state body at a conference or similar gathering open to the public that involves a discussion of issues of general interest to the public
    - (2) The attendance of a majority of the members of a state body at an open and publicized meeting organized to address a topic of state concern by a person or organization other than the state body
    - (3) The attendance of a majority of the members of a state body at an open and noticed meeting of another state body or of a legislative body of a local agency
    - (4) The attendance of a majority of the members of a state body at a purely social or ceremonial occasion
  - (b) The attendance of a majority of the members of a state body at an open and noticed meeting of a standing committee of that body, if the members of the state body who are not

members of the standing committee attend only as observers, also does not constitute a meeting.

**B. Serial meetings are prohibited.**

1. As amended in 2009, the Act expressly prohibits the use of serial meetings. A serial meeting occurs when a majority of the members of a state body use a series of communications of any kind, directly or through intermediaries, to -

- discuss,
- deliberate, or
- take action

outside of a noticed meeting on any item of business within the jurisdiction of the body. (§ 11122.5(b)(1))

2. However, the prohibition on serial meetings does not “prevent an employee or official of a state agency from engaging in separate conversations or communications outside of a meeting authorized by this chapter with members of a [state] body in order to answer questions or provide information regarding a matter that is within the subject matter jurisdiction of the state agency, if that person does not communicate to members of the [state] body the comments or position of any other member or members of the [state] body.” (§ 11122.5(b)(2))
3. Consistent with Paragraph 2 above, the Commission requests that parties meeting with a Commissioner’s Office not reveal to any Commissioner’s Office the thinking of any other Commissioner’s Office about a matter that the Commission may vote on. Similarly, parties meeting with a Commissioner’s Office should not provide that Office with any information of anticipated votes of other Commissioners. The term “Commissioner’s Office” here refers to a Commissioner together with that Commissioner’s personal staff (e.g., personal advisors and chief of staff).
4. The Act does, however, allow *serial* discussions outside of a publicly noticed meeting. of purely a procedural nature among a majority of the members of a state body, or their intermediaries.

**V. All meetings require notice to the public.**

**A. Basic Requirements**

1. The notice and agenda provisions require state bodies to provide notice of their meetings to any person who requests that notice in writing. (§11125(a))
2. The notice of a meeting must include a specific agenda for the meeting.
3. Notice of a meeting must be given to the public at least 10 days before the meeting. In addition, notice must be made available on the Internet at least 10 days before the meeting. The “notice” must include the name, address, and telephone number of a person who can provide further information prior to the meeting.
4. The written notice also must include the address of the Internet site where notices required by the Act are made available.
5. The notice of a meeting does not need to include a list of speakers expected to appear at the meeting.

**B. All meetings require an agenda.**

1. *Agenda requirements*
  - (a) The agenda must contain a brief description of the items of business to be transacted or discussed in open or closed session. (§ 11125(b))
2. *How specific or broad do agenda items have to be?*
  - (a) A brief general description of an item generally does not need to exceed 20 words.
    - (1) However, the agenda items should be drafted to provide interested members of the public with enough information to allow them to decide whether to attend the meeting or to participate in that particular agenda item.
3. *Can items be added to the agenda within the 10-day notice period?*
  - (a) Items can be added to the agenda within the 10-day notice period in either of the following situations:
    - (1) A majority of the state body first votes that an emergency situation exists (§ 11125.3(a)(1)),

An “emergency situation” is defined as either of the following:

- a) work stoppage or other activity that severely impairs public health or safety, or both. (§ 11125.5(b)(1))
  - b) crippling disaster that severely impairs public health or safety, or both. (§ 11125.5(b)(2))
- (2) The state body determines that there is a need for immediate action and that the need for action came to the attention of the state body after the agenda was posted (§ 11125.3(a)(2)).
- a) Two-thirds of the members of the state body must vote in favor of this determination, or if two-thirds of the state body members are not present, then the vote must be unanimous. (§ 11125.3(a)(2))
  - (b) Notice must be given to members of the state body and to national wire services no later than 48 hours prior to the meeting. (§ 11125.3(b))
  - (c) Changes made to the agenda under this section must also be posted on the Internet as soon as practicable. (§ 11125.3(a)(b))
4. *Can a state body address items raised by the public at a meeting?*
- (a) The state body cannot act on a matter raised by a member of the public unless it is on the agenda for that meeting. The state body can schedule issues raised by the public for consideration at future meetings.

**C. Special requirements for meetings held by videoconference or teleconference.**

1. *Definition of a teleconference*
- (a) A teleconference includes any meeting in which members of the state body are at different locations and connected by electronic means, through either audio or both audio or video. (§ 11123(b)(2))
  - (b) Any meeting can be held by teleconference. (§ 11123(b)(1))

2. *Requirements for a teleconference*(§ 11123(b))
  - (a) The portion of the teleconferenced meeting that is required to be open to the public must be audible to the public at the location specified in the notice of the meeting
  - (b) The state body must post agendas at all teleconference locations and conduct teleconference meetings in a manner that protects the rights of any party or member of the public appearing before the state body
  - (c) Each teleconference location must be identified in the notice and agenda of the meeting
  - (d) Each teleconference location must be accessible to the public
  - (e) The agenda must provide an opportunity for members of the public to address the state body directly on each agenda item (as further discussed below) at each teleconference location.
  - (f) All votes taken during a teleconferenced meeting must be by roll call
  - (g) At least one member of the state body must be physically present at the location specified in the notice of the meeting.

## **VI. Rights of the public**

### **A. Rights of the public to access records**

1. When a state body, or a member of the body, provides written material relating to a matter on the agenda of a public meeting to a majority of the body, either before or during a meeting, those materials must be made available to the public at the meeting, unless they are confidential.
2. Written materials provided to a majority of the state body by other persons relating to a matter on the agenda must be made available to the public after the meeting, unless they are confidential.
3. Any such disclosable records must be made available to the public upon request without delay
4. Any such disclosable records must be made available in appropriate alternative formats, as required by Section 202 of the Americans with Disabilities Act of 1990 and the implementing federal regulations, upon request by a person with a disability.

**B. Rights of the public to speak at a meeting.**

1. *The state body must provide an opportunity for members of the public to directly address the state body on any agenda item before or during the state body’s discussion or consideration of the item. (§ 11125.7(a))*
2. Members of the public do not have a right to speak on agenda items that involve decisions of the Public Utilities Commission regarding adjudicatory hearings. (§ 11125.7(g))

Adjudicatory hearings are hearings that are held in enforcement cases, and in complaint cases that do not challenge the reasonableness of any rates or charges of a public utility. (Pub. Util. Code § 1701.1(c)(2))

**VII. Closed Sessions**

**A. Certain statutes authorize the Commission to hold closed sessions in a number of specific circumstances.**

**B. The Commission most frequently holds closed sessions in three of these circumstances.**

1. *The Act provides that state bodies may meet in closed session to discuss “pending litigation” with legal counsel. (§ 11126(e)(1))*
  - (a) The Act defines three different situations in which litigation is considered “pending”:
    - (1) When an adjudicatory proceeding to which the state body is a party has been initiated formally before a court, another administrative agency, or an arbitrator (§ 11126(e)(2)(A))
      - a) These items appear on the Commission’s agenda as “existing litigation”.
      - b) This category does *not* include adjudicatory proceedings to which the Commission has not yet become a party.
    - (2) When “in the opinion of the state body on the advice of its legal counsel, based on existing facts and circumstances, there is a significant exposure to litigation against the state body.” (§ 11126(e)(2)(B)(i))



These items appear on the Commission's agenda as "threatened litigation".

- (3) When "[b]ased on existing facts and circumstances, the state body has decided to initiate or is deciding whether to initiate litigation." (§ 11126(e)(2)(C)(i))
  - a) These items appear on the Commission's agenda as "initiation of litigation".
  - b) Initiation of litigation includes situations in which the Commission is considering whether or not to intervene in litigation that has been formally filed, but in which the Commission is not yet a party.
2. *The Act provides that state bodies may meet in closed session to consider personnel issues. (§ 11126(a)(1))*
  - (a) Personnel issues are defined as situations in which the state body meets to:
    - (1) Consider the appointment, employment, evaluation of performance, or dismissal of a public employee, OR
    - (2) Hear complaints or charges brought against that employee by another person or employee, unless the employee requests a public hearing.
3. *The Public Utilities Code allows the Commission to meet in closed session for the purposes of a ratesetting deliberative meeting. (Pub. Util. Code § 1701.3(c))*
  - (a) A ratesetting deliberative meeting may be held concerning an item that is categorized as "ratesetting" as defined in Pub. Util. Code § 1701.1(c)(3) that has gone to hearing. In order to hold a closed session on such an item, there must be a ban on ex parte communications for a period specified in Pub. Util. Code § 1701.3(c) and the Commission's Rules of Practice and Procedure.

**C. Notice requirements for closed sessions.**

1. Items to be considered in closed session ordinarily must be included on the agenda published 10 days in advance of the meeting. (§ 11125(b).)
2. The state body may discuss in closed session an item not appearing on the published agenda under the following circumstances: (§ 11126.3(d))
  - (a) If the item is a “pending litigation” matter that arose after the agenda was published the postponement of which will prevent the state body from complying with a statutory, court-ordered, or other legally imposed deadline; and.
  - (b) If the state body publicly announces at the meeting the title of the litigation to be discussed, or specifically identifies it in some other way, unless one of the specifically described exceptions to this requirement applies.