

The Bagley-Keene Open Meeting Act

Training for California Tahoe Conservancy
Governing Board

PRESENTED BY:

DANAE AITCHISON

DEPUTY ATTORNEY GENERAL

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Overview

- Purpose of the Act
- Who Has to Comply
- Basic Requirements
- What is a Meeting
- Committees
- Closed Sessions
- Penalties for Violation
- Comparison to Brown Act
- COVID-19 & Open Meeting Requirements
- Open Meeting Post-COVID-19

Purpose of the Act?

- ▶ Public agencies are here to serve California's citizens.
- ▶ Agency actions must be open and accessible.
- ▶ Public must be informed and involved in agency decision-making.

Who has to comply?

- ▶ All meetings conducted by a “State Body” are subject to the Bagley-Keene Open Meeting Act.
- ▶ A “State Body” is:
 - ▶ A state board, commission, or similar multimember body created by statute. **CALIFORNIA TAHOE CONSERVANCY**
 - ▶ A similar multimember body that exercises delegated authority of a state body.
 - ▶ An advisory board, commission, committee, subcommittee, or similar multimember advisory unit if created by formal action.
 - ▶ Advisory body must consist of three or more persons.

Basic Requirements - Procedures

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- ▶ For an upcoming meeting, the State Body must:
 - ▶ Provide notice of meeting – including agenda - upon public request
 - ▶ Provide notice of meeting – including agenda - on Internet at least 10 days prior to meeting
 - ▶ Agenda briefly describes business to be transacted
 - ▶ Make public records available
 - ▶ Provide public an opportunity to address the State Body

Basic Requirements – “Meeting”

- ▶ “Meeting” Requirements:
 - ▶ Location must be ADA compliant.
 - ▶ Public must not be required to fulfill any condition to gain access to meeting.
 - ▶ Public must be able to record meeting unless device is persistently disruptive.

What is a Meeting?

- ▶ The Bagley-Keene Open Meeting Act applies to all “meetings” of a State Body.
- ▶ A “meeting” is:
 - ▶ “Any congregation of a majority of the members of a state body at the at the same time and place to hear, discuss, or deliberate upon an item that is within the subject matter jurisdiction of the state body to which it pertains.”
- ▶ Includes regular, special, and emergency meetings as defined in the Act
- ▶ For Tahoe Conservancy, a quorum of 4 voting members is required to transact business.

What is a Meeting?

Serial meetings:

- ▶ A series of communications, each of which involves less than a quorum of the body, but taken together involve a majority.
- ▶ “What the Body cannot do as a group it cannot do through individual communications”

Example 1

- ▶ An agenda includes an item for awarding grant funds to ten out of twenty projects that submitted timely grant applications.
 - ▶ Member A calls Member B to talk about how great one of the grant applications was that didn't get recommended for funding, and that it should be considered more carefully.
 - ▶ Member B calls Member C on the same topic.
 - ▶ Member C calls member D on the same topic.
- ▶ Permissible?



Example 2

Staff communicates individually with each agency board member in advance of a regularly noticed/agendized meeting.

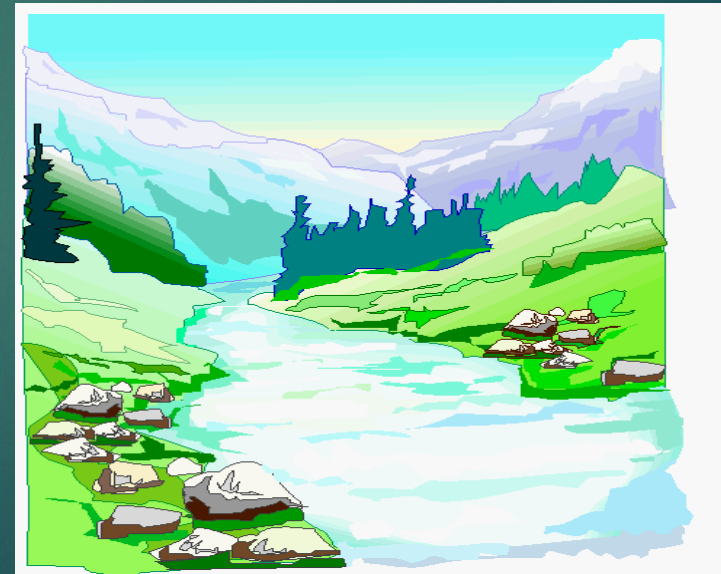
Permissible?



Example 3

- ▶ The chair of a governing board directs two members to attend a site visit and report back to the full Board at its next meeting.

- ▶ Allowed?



What is Not a Meeting?

- ▶ Gatherings that do not constitute a meeting include:
 - ▶ Social gatherings
 - ▶ Conferences that are open to the public and involve matters of general concern
 - ▶ Open and publicized meetings organized by an individual or organization to discuss topics of state concern
 - ▶ Open and noticed meetings of another state body or local agency
 - ▶ Open and noticed meetings of a standing committee, provided that non-committee board members attend only as observers

Teleconference Meetings

- ▶ Include teleconference meeting location(s) on the agenda
- ▶ Ensure equipment is sufficient
- ▶ Post the agenda at all teleconference locations
- ▶ All votes taken during a teleconference meeting must be by roll call vote
- ▶ The public at any teleconference location must have an opportunity to address the governing body in the same manner as those attending the meeting in person

Closed Sessions

- ▶ Exception to Bagley-Keene Act allowing State Bodies to conduct meetings without public involvement.
 - ▶ Very narrowly construed.
- ▶ Requirements:
 - ▶ Include mention of closed session in the open meeting's notice.
 - ▶ Disclose in the open meeting the nature of items to be discussed in closed session.
 - ▶ Reconvene in open session prior to adjournment and make reports, disclosures, and provide any necessary documentation.

Closed Sessions

- ▶ Permissible Topics
 - Personnel matters
 - Pending litigation
 - Real estate transactions

Penalties and Remedies for Violations of the Act

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- ▶ Potential penalties or remedies for a violation:
 - ▶ Decisions made may be considered null and void.
 - ▶ Court costs and legal fees awarded to citizen who files successful legal challenge.
 - ▶ Criminal misdemeanor penalties.

Comparison to Brown Act

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	Bagley-Keene Act	Brown Act
Applicable agency	State agencies	Local agencies
Intent of law that public agency actions be taken openly	✓	✓
Notice/Agenda requirements	10 days for regular mtgs	72 hours for regular mtgs
Agenda must briefly describe business items to be addressed?	✓	✓
Public opportunity to comment?	✓	✓
No Board action on non-agendized items?	✓	✓
Teleconference meetings allowed?	✓	✓
Closed sessions allowed?	✓	✓
Closed session descriptions in statute	NO	YES – Gov. Code 54954.5

Open Meeting Requirements During Pandemic, Next Steps

- Executive Order N-29-20
- Executive Order E-08-21

QUESTIONS

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