



Attachment A

Agenda Item 5: Bagley-Keene Open Meeting Act

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Purpose of the Act

To allow members of the public to attend and participate as fully as possible in a state body's decision-making processes.

(Gov. Code section 11120; 103 Ops.Cal.Atty.Gen. 42)

Applicability to Workforce Council

The Act applies to “state bodies,” such as “every state board... that is created by statute...” (Gov. Code section 11121(a)).

- Section 128215 of Health & Safety Code created the California Health Workforce Education and Training Council.

Committees: The Act also applies to any advisory committee created if the committee consists of 3 or more persons (Gov. Code section 11121(c)).

What is a Meeting?

Every “meeting” is subject to the Act’s requirements.

“Meeting” Definition: A quorum of the Council/committee convening, at the same time and place, to hear, discuss, or deliberate on any item within the subject matter of the Board/committee.

- A “quorum” is the minimum number of members who must be present for the Council to transact business and California law generally states that a quorum is a majority of members. (94 Ops.Cal.Atty.Gen. 100.)
- For the full Council a quorum is 9 appointed members (from a total of 17).

(Gov. Code section 11122.5(a))

Physical Presence/Location Requirements and COVID-19 Exception

Normally, the Act requires the physical presence of Council members at meetings and a physical meeting location where the public may go. The Act allows some teleconferencing, but still requires physical presence and location.

Because of COVID-19, the Governor suspended the physical presence/location requirements until March 31, 2022. (Governor Exec. Order No. N-1-22 (January 5, 2022).)

- The Workforce Council must still comply with the notice and public participation requirements of the Act.
- Statute urges state bodies to adhere as closely to the Act as possible to “maximize transparency and provide the public access to meetings.”

Serial Communications Are Prohibited

A quorum of members should not, outside of a meeting:

- communicate in a series of communications of any kind,
- directly or through intermediaries,
- regarding items within the subject matter of the Board/committee.

Purpose: to prevent Council actions/decisions being made in secret, outside of a public meeting.

(Gov. Code section 11122.5(b))

“Meeting” Exceptions

The Act does not consider the following to be “meetings”:

- **Public Contacts:** a member of the public contacting a majority of Council members if Council members do not solicit such contacts.
- **Social Gatherings:** a majority of the Council may attend a purely social event, if they do not discuss Board issues among themselves.
- **Conferences:** Conferences are exempt as long as they are open to the public and involve subject matter of general interest, and a majority of Council members do not discuss Council issues among themselves, other than as part of the scheduled program.

(Gov. Code section 11122.5(c))

Board Member Attendance at Subcommittee Meetings

If a majority of the Council will be present at a subcommittee meeting, a Council member, who is not a member of the subcommittee, may only attend as an **observer**. (Gov. Code section 11122.5(c)(6))

“**Observers**” are prohibited from asking questions or making statements at the meeting and can only watch and listen. (81 Ops.Cal.Atty.Gen.156.)

Notice and Agenda

Meeting notices are required and must be posted at least **10 days** before the meeting.

Notices must have:

- Time and place(s) of the meeting.
- A **specific agenda** for the meeting that contains a brief description of all items to be discussed/transacted at the meeting.
 - The description should provide enough information to allow the public to understand what issues will be discussed or considered.
 - Generally, if an issue is not on the agenda, the Council cannot consider it. However, a new issue can be mentioned for the purpose of including it at a future meeting.

The 10-day notice requirement does not apply for “emergency” or “special” meetings as defined under statute.

(Gov. Code section 11125)

Public Attendance and Participation

Generally, meetings must be **open and public**.

- Conditions on public attendance at the meeting cannot be imposed. An individual is not required to identify themselves or to sign-in to attend.

Participation: Council must give the public an opportunity to directly address the Council on each agenda item before or during the Council's discussion or consideration of the item.

- Public criticism of the Council cannot be prohibited.

Broadcasting/Recording of Meetings: Members of the public are allowed to record and broadcast meetings.

(Gov. Code sections 11123, 11124, 11124.1, and 11125.7)

Closed Sessions

“Closed sessions” are parts of meetings without the public and are allowed only for specific reasons, e.g., to discuss pending litigation or to discuss employment issues.

These sessions have to be included on the agenda and the specific statutory authority allowing the closed sessions must be stated.

(See Gov. Code section 11126)

Meeting Documents

Generally, materials distributed to the Council prior to or during a meeting in connection with an issue to be discussed or considered at the meeting are public records.

- Such materials prepared by Council members or Council staff are required to be available to the public at the meeting.
- Such materials prepared by others are required to be available to the public after the meeting.

(Gov. Code section 11125.1)

Voting

The vote or abstention of each Council member must be publicly reported. (Gov. Code section 11123(c).)

- If teleconferencing, votes must be taken by rollcall. (Gov. Code sections 11123(b); and 11123.5(e).)

Vote by secret ballot at a meeting is not allowed. (68 Ops.Cal.Atty.Gen. 65.)

Vote by proxy is not authorized. (68 Ops.Cal.Atty.Gen. 65.)

Abstentions

Abstentions may complicate voting.

In general, a state body cannot act without support of at least a majority of its quorum. For the full Workforce Council, this is at least 9 members.

Members who voluntarily abstain are counted toward a quorum, but decisions will only require the majority of those members who actually vote as long as there is support from a majority of the quorum.

Members who are disqualified from voting by law are not counted toward a quorum.

(94 Ops.Cal.Atty.Gen. 100.)

Penalties for Non-Compliance

Civil:

- Any interested person, the Attorney General, or a district attorney can commence court action to stop or prevent violations of the Act. (Gov. Code section 11130.)
- Any interested person can also commence court action to declare a Council action taken in violation of the Act's notice, agenda, and public attendance requirements as "null and void." (Gov. Code section 11130.3.)
- If successful, a plaintiff can obtain a court order, court costs, and attorneys' fees. (Gov. Code section 11130.5.)

Criminal:

- It is also a misdemeanor for any Council member to attend a meeting in violation of the act and where the member "intends to deprive the public of information to which the member knows... the public is entitled." (Gov. Code section 11130.7.)