

Bagley-Keene Open Meeting Act

Government Code Sections 11120 to 11133

Geoffrey Trautman, Attorney, HCAI

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Overview of Bagley-Keene Open Meeting Act

- Purpose – To allow members of the public to attend and participate as fully as possible in a state body’s decision-making process. (Gov. Code section 11120; 103 Ops.Cal.Atty.Gen 42)
- Applies to “state bodies” such as every state board created by statute and advisory committees of 3 or more persons, created by state action. (Gov. Code section 11121(a) and 11121(c).)
- A subcommittee established by the Health Equity Advisory Committee which consists of 3 or more persons would also be subject to the Act. (Gov. Code section 11121(c).)

What is a Meeting?

Every “meeting” is subject to the Act

“Meeting” defined: A quorum of the Committee convening, at the same time and place, to hear, discuss, or deliberate on any item within the subject matter of the Committee.

- A “quorum” is the minimum number of members who must be present for the Committee to transact business. California law generally states that a quorum is a majority of members.
- For the full Committee, a quorum is 6 members (from a total of 11).

(Gov. Code section 11122.5(a))

Serial Meetings/Communications are Prohibited

To prevent Committee actions/decisions from being made in secret or outside of a public meeting –

Outside of any regularly noticed public meetings, a quorum of members shall not

- communicate in a series of communications of any kind (including email or phone calls),
- directly or through intermediaries
- regarding topics within the subject matter of the Committee
- members are not prohibited from meeting at social events or other gatherings so long as they do not discuss Committee subject matters.

(Gov. Code section 11122.5(b))

Meeting Notices and Agendas

- Notice of the meeting time and places(s) and the meeting agenda must be published at least **10 days** before the meeting. Agendas will be posted on the HCAI website.
- The agenda must provide a brief description of all items to be discussed/transacted at the meeting.
- The description should provide enough information for the public to understand what issues will be discussed or considered.
- If an item is not on the published agenda, the Committee must not discuss it at the meeting. However, a new issue or item can be mentioned for the purpose of including it in a future meeting agenda.

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

(Gov. Code section 11125)

Public Attendance and Participation

- Committee meetings must be **open and public**.
- No conditions or restrictions on public attendance can be imposed. An individual is not required to identify themselves or sign-in to attend.

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

- Public criticism of the Committee 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 public participation and are only allowed for specific reasons, e.g. to discuss pending litigation.
- Closed sessions must be included on the meeting agenda along with the specific statutory authority for the closed session.

(See Gov. Code section 11126)

Meeting Documents

- All materials provided to the Committee prior to or during a meeting, about an issue for discussion or consideration at the meeting, are public records.
- Materials that HCAI provides to the members in advance of the meetings will be publicly available on the HCAI website by the start of the meeting.
- 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 Committee member must be publicly reported.
(Gov. Code section 11123(c).)
- All votes must be taken by roll-call.
(Gov. Code sections 11123(b) and 11123.5(e).)
- Vote by secret ballot at a meeting is not allowed.
(68 Ops.Cal.Att.Gen. 65.)
- Vote by proxy is not authorized.
(68 Ops.Cal.Att.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 Committee, this is at least 6 members.

Members who voluntarily abstain are counted toward a quorum, but decisions will require a 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.Att.Gen. 100.)

Penalties for Non-Compliance

Civil:

- Any interested person, the Attorney General, or a district attorney can initiate court action to stop or prevent violations of the Act. (Gov. Code section 11130.)
- Any interested person can also initiate court action to declare action by a state body taken in violation of the Act's notice agency, 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 Committee 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.)

Conflict of Interest Code Form 700 – Filing

- Committee members are prohibited from making, participating in making, or attempting to influence a government decision if they know or have reason to know the decision will have a material financial effect on their interests.
- Be aware of real or perceived conflicts of interest.
- When an issue arises, inquire with the HCAI Legal Office.
- Complete the Form 700 Statement of Economic Interests
 - upon assuming your appointment
 - annually each April 1
 - upon leaving the Committee.
- Complete ethics training upon assuming your appointment and every two years. [State Officials - Ethics Training Course | State of California - Department of Justice - Office of the Attorney General](#)

(Gov. Code section 87100.)

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