

DOCKETED

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Bagley-Keene Open Meeting Act and Ex Parte Rule

DACAG Legal Support Team
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Bagley-Keene Open Meeting Act

Bagley-Keene Open Meeting Act: Purpose

The purpose of Bagley-Keene is to ensure that public agencies ***conduct the people's business openly*** so that the public may observe and be informed.

The Act protects the public's opportunity to observe, but also to participate in, the decision-making process of state bodies.

What does Bagley-Keene apply to?

- **State bodies** subject to Bagley-Keene include the DACAG and any subcommittees of 3 or more:
 - A state body created by statute or required by law to conduct official meetings
 - A board, commission, committee, or similar multimember body that exercises any authority of a state body delegated to it by that state body.
 - An advisory body or subcommittee composed of 3 or more members, if created by formal action of a state body.
- Authority can be advisory-only

What is a Bagley-Keene Meeting?

- **Congregational Meeting: Permitted!**
 - When a majority or quorum are all together
 - At the same time and place (physical or virtual)
 - To hear, discuss, or deliberate upon
 - Any item that is within the subject matter jurisdiction of the state body to which it pertains.
 - *Note: same analysis applies to subbodies subject to Bagley-Keene*
- **Serial Meeting: Prohibited!**
 - Prohibits the use of
 - direct communication,
 - personal intermediaries, or
 - technological devices
 - That are employed by a majority of the members of the state body
 - To develop a collective concurrence as to action to be taken on an item by the members of the state body
 - Outside of a noticed, open meeting.

Making a Meeting Bagley-Keene Compliant

- **Notice & Agenda**

- Provide notice to the public 10 calendar days before the meeting
- Notice must include time/date/place of meeting
- Agenda must describe each item of business the state body will discuss or decide at the meeting.
 - The public should not have to be “clairvoyant or have had collateral information” to understand a state body’s intended action.
 - A state body may not deliberate or act upon on any item not described, or inadequately described, on the agenda.

- **Public Access**

- The public must be provided access to written records prepared by the state body or member of a state body for the members’ consideration prior to or during the meeting.
- The public shall have an opportunity to directly address the state body on each item before or during the discussion or consideration of the item.

Bagley-Keene: Public Participation

- The Act allows the ***general public to monitor and participate*** in meetings of state bodies.
- The site (physical or virtual) must be ***accessible*** to the disabled.
- The state body is prohibited from imposing any conditions on attendance at a meeting.
 - Sign-in sheets are voluntary and not a pre-requisite for attending or commenting at the meeting.
- The public is ***entitled to record and broadcast*** (audio and/or video) the meetings, unless it causes persistent disruption.

Bagley-Keene: Response to Public Comments

- DACAG as a body cannot take action or state a position on a public comment if the topic was not included as a noticed agenda item
- The DACAG members may individually respond to any public comment but there is no obligation to respond or answer questions.
- The Chair of the DACAG can consider whether to agendize the topic for a future meeting.
- The Chair of the DACAG may place reasonable content-neutral rules or regulations on the time allotted to members of the public to speak.
 - Rules may not prohibit public criticism of the policies, programs, or services of the DACAG, CEC or CPUC, or of the acts or omissions of those state bodies.
 - State bodies cannot restrict speech based on viewpoint. Only if it is a persistent disruption.

Remote Meeting Rules for Advisory Bodies until January 1, 2030

- Advisory body members may attend remotely if announced in the notice, but at least one agency staff person must be present at a noticed physical location where the public can attend.
- All members must appear on camera. If a member cannot appear on camera due to challenges with internet connectivity, the member shall announce the reason for their nonappearance.

Ex Parte Rules

Ex Parte

- Ex parte communications are governed by:
 - The Administrative Procedures Act at Government Code sections 11430.10
 - Article 8 of the CPUC's Rules of Practice and Procedure
 - Section 1216 of the CEC's Regulations at Title 20 in the California Code of Regulations
- "Ex parte communication" means a **written communication** (including a communication by letter or electronic medium) or **oral communication** (including a communication by telephone or in person) that:
 - (1) concerns any issue in a **formal proceeding**, other than **procedural matters or matters of controversy**,
 - (2) takes place between an **interested person** and a **decisionmaker**, and
 - (3) does **not** occur in a public hearing, workshop, or other public forum that has been noticed to the official service list or on the record of the proceeding.
- Decisionmakers and interested persons are responsible to avoid ex parte communications.
- The statutes and rules provide remedial action to provide notice and opportunity to participate in communications to other parties or interested persons.

Ex Parte

- **DACAG/CPUC Proceeding Considerations**

- Noticed DACAG agenda creates a limited safe harbor – the DACAG agenda is emailed to each CPUC proceeding service list so parties are on notice of the agendized discussions

- **DACAG/CEC Proceeding Considerations**

- Applies to:
 - Applications for Certification (power plant proceedings)
 - Enforcement proceedings
- Decisionmakers and interested persons are each responsible to avoid or report ex parte communications
- The statutes and rules provide remedial action to provide notice and opportunity to other parties or interested person to participate in communications

Legal Resources

Bagley-Keene Open Meeting Act

- CA Office of the Attorney General - <https://oag.ca.gov/open-meetings>

Office of Attorney General

- Conflicts of interest guide - <https://oag.ca.gov/sites/all/files/agweb/pdfs/publications/coi.pdf>

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