

**DOCKETED**

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# ITEM 4

Bagley-Keene



# Bagley-Keene

A Brief Primer for the  
Disadvantaged Communities Advisory Group  
December 3, 2021





# Bagley-Keene Open Meeting Act

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.

Bagley-Keene places a higher value on transparency than efficiency and this drives many of its rules.





# Bagley-Keene

## Public Policy to Conduct People's Business Openly

### Applies to any “state body”

- Bagley-Keene generally defines State bodies as all mandated State boards, commissions, and similar multimember groups as well as committees of these groups that have been delegated authority to make decisions and advisory committees of more than two members. This includes the DACAG and can include its sub-groups.

### What is a meeting?

- A majority of members discuss topics relevant to the group's jurisdiction; and
- A majority of members are virtually or physically present, or
- A majority of members are indirectly communicating electronically or through intermediaries

**Not meetings:** certain gatherings (e.g., conferences, open and noticed meetings of other state or legislative body or local agencies, social)





# Bagley-Keene

**Meetings:** A meeting occurs whenever a majority or quorum of group members are physically or virtually present to discuss a topic related to its jurisdiction.

## CAUTION!!!

- A meeting can take place when a majority of members *discuss, deliberate, or take action* using direct (e.g., speaking in person) or indirect (e.g., email, speaking through intermediaries) communication
  - **Serial meetings are prohibited.** A serial meeting occurs when a majority of the members use a series of communications of any kind outside of a noticed meeting on any item of business within the jurisdiction of the body.
- Majority attendance at social events requires that members avoid discussing topics related to their group's area of authority is ok.





# Bagley-Keene

## Open Meeting and Notice Requirements

- Must provide meeting notices and agendas to the public before it meets
- Notice must be published on the Internet at **least ten days** prior to the meeting with contact and location information
- Agendas must describe items to be discussed, and, once made available, *cannot be changed without formal action and mandated notice*
- Written materials (e.g., presentations to the DACAG) must be made available to the public for inspection at the meeting
- Smaller meetings of DACAG members must also follow notice and open meeting requirements, if:
  - They consist of a **majority of members**
  - They consist of **three or more members and have been created by the DACAG and/or its chair** to advise the DACAG
  - They consist of **two or more members and have been empowered to exercise authority** on behalf of the DACAG





# Bagley-Keene

## Exceptions from the 10-day notice requirement

- Special Meetings
  - When immediate action must be taken (e.g., to discuss proposed legislation)
  - At the commencement of the special meeting, the state body must make a finding that 10-day notice would impose a substantial hardship on the body or that immediate action is required to protect the public interest and must provide a factual basis for the finding.
  - Notice be provided at least 48 hours before the meeting to the members of the body and all national wire services, along with posting on the Internet
- Emergency Meetings
  - Rare instances when there exists a crippling disaster or a work stoppage that would severely impair public health and safety
  - Requires majority vote that an emergency situation exists
  - Must provide notice to media requestors at least one hour prior to the meeting
  - Records and information on any action at the meeting must be posted ASAP after the meeting





# 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.
  - e.g., must be clear that sign-in sheets are voluntary and not a pre-requisite for either attending or speaking at the meeting
- The public is entitled to record and broadcast (audio and/or video) the meetings, unless it causes persistent disruption.
- Must provide reasonable time for members of the public to speak about each agenda item before or during discussion but can make reasonable limitations.
- Current Covid rules allowing for 100% virtual meetings are set to expire at the end of January 2022. After that meetings must be in a physical location or a hybrid of physical and virtual. It is possible the requirements may change again with changing circumstances.





# Bagley-Keene

## Public Comments

- A state body cannot act on a matter raised by a member of the public unless the matter is on the agenda for that meeting. If the matter is on the agenda, then public comments must occur before or during the DACAG's consideration of the item.
- Same day additions to the agenda are not allowable because even under the limited opportunities for agenda adds after the 10-day notice, the press still needs a 48-hour notice.
- The DACAG still has options:
  - The DACAG, or its members, may respond to the public comment but has no obligation to respond or answer questions
  - Your support staff can assist in getting the matter on the next meeting's agenda
  - A DACAG member can volunteer to review the issue and report back at the next meeting, but sub-groups officially tasked with reviewing an issue may be subject to Bagley-Keene themselves
  - Individual DACAG members can use any of their non-DACAG-based authority or tools to address the commentor's situation outside of a DACAG meeting, so long as they do not create any conflict of interest with their DACAG role





# Resources

## Bagley-Keene Open Meeting Act

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

## Legal Liasons

- Jason Reiger ([jonathan.reiger@cpuc.ca.gov](mailto:jonathan.reiger@cpuc.ca.gov))
- Renee Webster-Hawkins ([renee.webster-Hawkins@energy.ca.gov](mailto:renee.webster-Hawkins@energy.ca.gov))
- Sushil Jacob ([sushil.jacob@cpuc.ca.gov](mailto:sushil.jacob@cpuc.ca.gov))
- Deborah Dyer ([Deborah.dyer@energy.ca.gov](mailto:Deborah.dyer@energy.ca.gov))

*When in doubt, just ask!*

