

BAGLEY-KEENE OPEN MEETING ACT

*Training for the California High-Speed Rail
Authority Board of Directors*

Presented by:

Alicia Fowler, Chief Counsel and Kate Cook, Attorney IV



OVERVIEW

- Purpose of the Act
- Who Must 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 (GOV. CODE § 11120 ET SEQ.)

- 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.

“...actions of state agencies be taken openly and that their deliberation be conducted openly.”



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 HIGH-SPEED RAIL AUTHORITY BOARD OF DIRECTORS
 - » Applies **upon appointment** to the State Body.
 - » 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 of the body or a member of the body.

Advisory body must consist of three or more persons.



BASIC REQUIREMENTS - PROCEDURES

- **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 or discussed in open or closed session.*
 - » Make agendas and “other writings” distributed to a majority of Board Members available to the public upon request “without delay.”
 - » Provide public an opportunity to address the Board “on each agenda item before or during the state body’s discussion or consideration of the item.” (Gov. Code § 11125.7)
 - » Special meetings: opportunity to address Board on action items prior to action taken



BASIC REQUIREMENTS – “MEETING”

- **“Meeting” Requirements:**

- » Location must be ADA compliant.
- » Public must not be required to fulfill any condition to gain access to meeting, such as providing a name on an attendance sheet or “similar document.”
- » 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 High-Speed Rail, a quorum of 5 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 (“church mouse” rule)
 - » *In all examples, a majority of Board members must refrain from discussing or deliberating Authority business.*



TELECONFERENCE MEETINGS

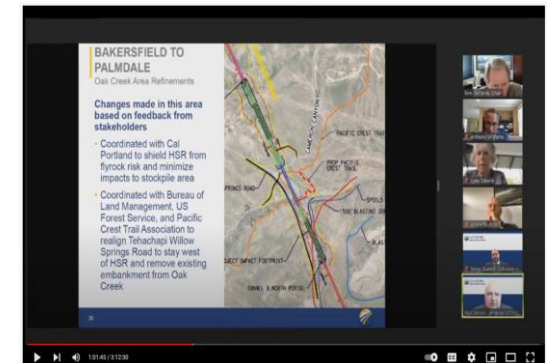
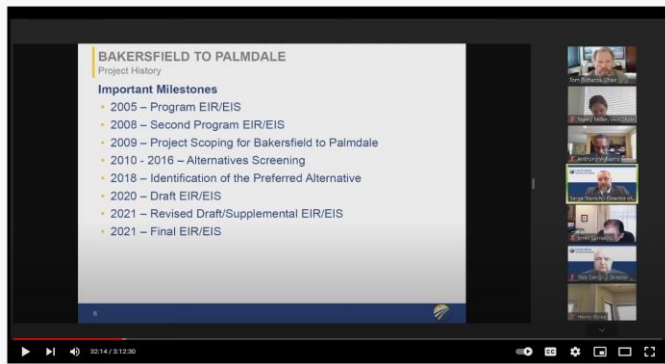
- **Include teleconference meeting location(s) on the agenda**
- **Ensure equipment is sufficient**
- **Post the agenda at all teleconference locations**
- **Locations are accessible to the public**
- **All votes taken during a teleconference meeting must be by roll call vote**
- **The public at any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



COVID AND OPEN MEETINGS

- **AB 361 passed in September and signed by Governor**

“This bill, until January 31, 2022, would authorize, subject to specified notice and accessibility requirements, a state body to hold public meetings through teleconferencing and to make public meetings accessible telephonically, or otherwise electronically, to all members of the public seeking to observe and to address the state body. With respect to a state body holding a public meeting pursuant to these provisions, the bill would suspend certain requirements of existing law, including the requirements that each teleconference location be accessible to the public and that members of the public be able to address the state body at each teleconference location. Under the bill, a state body that holds a meeting through teleconferencing and allows members of the public to observe and address the meeting telephonically or otherwise electronically would satisfy any requirement that the state body allow members of the public to attend the meeting and offer public comment. The bill would require that each state body that holds a meeting through teleconferencing provide notice of the meeting, and post the agenda, as provided. The bill would urge state bodies utilizing these teleconferencing procedures in the bill to use sound discretion and to make reasonable efforts to adhere as closely as reasonably possible to existing law, as provided.”



COVID AND OPEN MEETINGS

- **AB 361 extends the Governor's Executive Order N-29-20 permitting virtual meetings until January 31, 2022**
- **Bagley-Keene requirements currently suspended include:**
 - » Teleconference locations must be accessible to the public
 - » Teleconference locations identified in agenda
 - » Physical location for meeting where public may attend
- **Bagley-Keene requirements *not* suspended during Covid:**
 - » Noticing and agenda minimums (10 days, public comment, item descriptions)
 - » Opportunity for public comment prior to item discussion/action
- **AB 361 also requires:**
 - » "...a procedure for receiving and swiftly resolving requests for reasonable modification or accommodation from individuals with disabilities, consistent with the federal Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12101 et seq.), and resolving any doubt whatsoever in favor of accessibility."



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. Specific requirements depending on topic.
 - » Reconvene in open session prior to adjournment and make reports on action taken, disclosures, and provide any necessary documentation.
 - » May only discuss item on agenda for the closed session.
 - » Confidentiality



CLOSED SESSIONS

- **Permissible Topics**

- » Personnel matters
- » Pending litigation
- » Real estate transactions
- » Criminal/terrorist threats to agency property/data

- **Permissible Parties**

- » Board members
- » Legal counsel
- » Necessary staff, such as CEO
- » Real estate negotiator



PENALTIES AND REMEDIES FOR VIOLATIONS OF THE ACT

- **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

| | Bagley-Keene Act | Brown Act |
|--|--------------------------|---------------------------|
| Applicable agency | State agencies | Local agencies |
| Intent of law that public agency actions be taken openly | ✓ | ✓ |
| Notice/Agenda requirement | 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 54954.4 |



QUESTIONS



Headquarters

California High-Speed Rail Authority

770 L Street, Suite 800

Sacramento, CA 95814

www.hsr.ca.gov

Alicia.Fowler@hsr.ca.gov

