

AGENDA ITEM 12: BAGLEY-KEENE PRESENTATION

STATE OF CALIFORNIA  
BOARD OF CHIROPRACTIC EXAMINERS  
PUBLIC BOARD MEETING  
FRIDAY, FEBRUARY 15, 2019

HELD AT THE  
DEPARTMENT OF CONSUMER AFFAIRS, HEADQUARTERS II  
1747 NORTH MARKET BOULEVARD, ROOM #186  
SACRAMENTO, CA 95834

*A SEAT AT THE TABLE: THE OPEN IN THE BAGLEY-KEENE OPEN MEETING ACT*

PRESENTED BY:

KENNETH SWENSON, SENIOR LEGAL COUNSEL (ATTORNEY III)  
DEPARTMENT OF CONSUMER AFFAIRS, LEGAL AFFAIRS DIVISION  
1625 NORTH MARKET BOULEVARD, SUITE S-309  
SACRAMENTO, CA 95834

## Liberty and Transparency

*“I know not what course others may take; but as for me, give me liberty or give me death!”*

(Patrick Henry, March 23, 1775, Speech to Second Virginia Convention.)

*“The liberties of a people never were, nor ever will be, secure when the transactions of their rulers may be concealed from them.”*

(Patrick Henry, June 9, 1788, Speech to the Virginia Constitutional Convention.)

## Organic and Constitutional Underpinnings of Open Meeting Laws

*“Governments are instituted among Men, deriving their just powers from the consent of the governed.”*

(Declaration of Independence, July 4, 1776.)

*“We the people of the United States . . . do ordain and establish this Constitution for the United States of America.”*

(Preamble to the United States Constitution, September 17, 1787.)

*“The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.”*

(Tenth Amendment to the United States Constitution, December 15, 1791.)

*“We, the People of the State of California, grateful to Almighty God for our freedom, in order to secure and perpetuate its blessings, do establish this Constitution.”*

(Preamble to California Constitution.)

*“The people have the right of access to information concerning the conduct of the people's business, and, therefore, the meetings of public bodies and the writings of public officials and agencies shall be open to public scrutiny.”*

(California Constitution, article 1, section 3, subdivision (b)(1).)

## Purposes of Open Meeting Laws Generally

Open meeting laws require transparency and promote accountability of government entities and recognize and protect the right of public participation.

Open meeting laws reserve a place at the table for members of the public to monitor and participate in the decision-making process when a government entity sits down to conduct the people's business.

## California Open Meeting Laws

Ralph M. Brown Act, Government Code §§ 54950, et seq.  
(Added by Stats.1953, c. 1588, p. 3270, § 1.)

Bagley-Keene Open Meeting Act, Government Code §§ 11120, et seq.  
(Added by Stats.1967, c. 1656, p. 4026, § 122.)

Grunsky-Burton [Legislative] Open Meeting Act, Government Code §§ 9027, et seq.  
(Added by Stats.1989, c. 1235, § 2.)

Gloria Romero Open Meetings Act of 2000, Education Code §§ 89305, et seq.  
(Added by Stats.2000, c. 330 (A.B.1857), § 1.)

## Purposes of the Bagley-Keene Open Meeting Act

The people do not yield their sovereignty to the agencies which serve them.

The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know.

The people insist on remaining informed so that they may retain control over the instruments they have created.

(Government Code § 11520.)

## Basic Requirements of the Bagley-Keene Open Meeting Act

The Bagley-Keene Open Meeting Act requires a state body to:

- (1) give the public notice of its meetings;
- (2) prepare and post agendas for its meetings;
- (3) accept public testimony at its meetings; and
- (4) conduct its meetings in public unless authorized to meet in closed session.

## State Body Defined

Under the Bagley-Keene Open Meeting Act, a “state body” includes:

- (1) *“every state board, or commission, or similar multimember body of the state that is created by statute or required by law to conduct official meetings and every commission created by executive order;*
- (2) *a board, commission, committee, or similar multimember body that exercises any authority of a state body delegated to it by that state body;*
- (3) *an advisory board, advisory commission, advisory committee, advisory subcommittee, or similar multimember advisory body of a state body, if created by formal action of the state body or of any member of the state body, and if the advisory body so created consists of three or more persons.”*

(Government Code § 11121.)

## Meetings Defined

Under the Bagley-Keene Open Meeting Act, a “meeting” includes:

*“[A]ny congregation of a majority of the members of a state body at the same time and place to hear, discuss, or deliberate upon any item that is within the subject matter jurisdiction of the state body to which it pertains.”*

(Government Code § 11122.5, subdiv. (a).)

## Serial Meetings Prohibited

*“A majority of the members of a state body shall not, outside of a meeting authorized by this chapter, use a series of communications of any kind, directly or through intermediaries, to discuss, deliberate, or take action on any item of business that is within the subject matter of the state body.”*

(Government Code § 11122.5, subdiv. (b)(1).)

## Enforcement of Bagley-Keene Open Meeting Act

- (1) Civil Proceeding to Prevent Violation of Act (Government Code § 11130, subdiv. (a));
- (2) Civil Proceeding to Determine Validity of Action Taken in Violation of Act (Government Code § 11130, subdiv. (a));
- (3) Criminal Action for Violation of Act (Government Code § 11130.7).

## Advantages of Compliance With Bagley-Keene Open Meeting Act

### Posting Agenda in Advance:

- Lets members know items coming before the board in advance of meeting;
- Eliminates any confusion over what items will have to be addressed;
- Prevents members from having to consider other items at meeting.

### Accepting Public Testimony:

- Allows members to consider other perspectives;
- Improves results of board decisions and outcomes;
- Creates more complete record to support board decisions.

## RESOURCES

Department of Consumer Affairs, Legal Affairs Division, Bagley-Keene Open Meeting Act Guide, [https://www.dca.ca.gov/publications/bagleykeene\\_meetingact.pdf](https://www.dca.ca.gov/publications/bagleykeene_meetingact.pdf).

Department of Justice, Office of the Attorney General, *A Handy Guide to Bagley Keene Open Meeting Act 2004*, [http://www.ag.ca.gov/publications/bagleykeene2004\\_ada.pdf](http://www.ag.ca.gov/publications/bagleykeene2004_ada.pdf).