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The Bagley-Keene Open Meeting Act's Requirements

The Bagley-Keene Open Meeting Act applies to the Office of Administrative Hearings' Lanterman Advisory Committee (Committee), because the Committee is established in law. ***As a Committee member, it is important you are aware of recent changes to the Bagley-Keene Open Meeting Act that apply to your participation in this Committee.*** A short overview, and then a discussion of recent changes, are below. Please be familiar with the overview and recent changes so that our meetings can be compliant with the law and as productive as possible.

General Provisions of the Bagley-Keene Open Meeting Act:

A meeting is defined as any gathering, remote or in-person or both, of a simple majority of the members. A simple majority of the members for this Committee is a majority (half, plus one) of the appointed members. Meetings must be open to the public. A non-public "closed session" is allowed only for personnel or legal matters that are defined in law.

The agenda for each meeting must be posted at least 10 days before the meeting. The agenda must include each item of business that the Committee will consider at the meeting. The Committee may not deliberate or act upon any item of business inadequately described or not described at all on the agenda, outside of specific limited exceptions. An example of an exception would be calling an emergency meeting to address a work stoppage that severely impacts public health or safety.

Generally, the public is entitled to attend meetings with minimal restrictions. Meeting locations must be accessible to all members of the public, including individuals with disabilities. The public may attend meetings without identifying themselves.

Generally, the public is entitled to speak at meetings with few restrictions. Allowing public comment on each agenda item immediately before the Committee considers the agenda item ensures a clear and complete understanding of any public concern regarding the agenda item. The public may comment generally on any other topic under the Committee's jurisdiction even if that topic does not appear on the agenda. However, the Committee cannot deliberate on any matter not specified on the agenda.

Communication about Committee business must be conducted transparently. Below are some examples of situations where a meeting should be noticed and **open to the public**:

- When a majority of the Committee membership gathers to hear, discuss, or deliberate within the subject matter jurisdiction of the Committee, that meeting should be public.
- When a majority of the members, outside of a meeting open to the public, 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 jurisdiction of the Committee, those are communications that should be made in a public meeting. An email chain, or series of phone calls from one member to another, are examples of what is not allowed.
- When discussions about Committee matters occur, even among smaller subsets of members (e.g., a subcommittee), those are discussions that should be public.
- When a majority of the Committee attend a luncheon and the members discuss any Committee business, the discussions should be public.
- When a majority of the Committee members attending a noticed or publicized public meeting or conference that another public or private entity holds on a topic of statewide concern where deliberations occur between Committee members on a matter within the subject matter jurisdiction of the Committee, but the deliberations are not part of the scheduled and noticed meeting program of the other public or private entity, the deliberations would be improper.

Below are some examples of situations where a meeting of members is **not required to be open to the public**:

- A social or ceremonial gathering, attended by a majority of the Committee members, is not a meeting that must be open to the public, so long as the members do not deliberate with each other at the event on specific business within the subject matter jurisdiction of the Committee.
- A majority of the Committee members may attend a noticed or publicized public meeting that another public or private entity holds on a topic of statewide concern. Deliberations on a matter within the subject matter jurisdiction of the Committee are allowed if they are a part of the scheduled and noticed meeting program.

Recent Changes to the Bagley-Keene Open Meeting Act

During the pandemic, the Governor's emergency orders and temporary amendments to the Bagley-Keene Open Meeting Act allowed Committee meetings to be completely virtual. Recent changes to the Bagley-Keene Open Meeting Act have extended the ability to hold Committee meetings remotely, without requiring a quorum (majority) of the Committee to be in-person together at one location. However, the way remote meetings may be held is different now.

Senate Bill (SB) 544 was signed into law on September 22, 2023. **From January 1, 2024, through January 1, 2026, the Bagley-Keene Act now states:**

Government Code section [11123](#), subdivision (b)(2), defines “teleconference” as a meeting where the members of the Committee are at different locations, connected by electronic means, through audio or video or both. Meetings like this are informally referred to as “remote” or “virtual” meetings.

Any state advisory body may hold a meeting by teleconference if the meeting complies with the requirements below, which are from Government Code section [11123.5](#).

The state body must provide notice to the public at least 24 hours before the meeting that identifies any members who are participating remotely (although there is no requirement to disclose these members’ locations).

As set forth above, at least 10 days before the meeting, the notice and agenda of the meeting must be publicly posted. Under Government Code section [11123.5](#):

- The notice must include information on how the public can access the meeting remotely.
- The notice also must identify a primary physical meeting location for the public to attend in person if they wish. The primary physical meeting location must also be disclosed in the agenda.
- At least one staff member of the state body shall be present at the primary physical meeting location, and the agenda must be posted at the location.

An advisory committee member who participates remotely must be visible on camera during the open portion of the meeting unless it is technologically impracticable to do so, such as when a member experiences a lack of reliable broadband or internet connectivity that would be remedied by joining without video. If a member does not appear on camera due to challenges with internet connectivity, the member shall communicate the reason for their nonappearance on camera. The members who participate remotely must be listed in the minutes of the meeting.

Upon discovering that a means of remote access for the public has failed during a meeting, the Committee shall end or adjourn the meeting and provide notice of the meeting’s end.