

# BAGLEY-KEENE OPEN MEETING ACT

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

Presented by:

*Assistant Chief Counsel Kendall Bonebrake and Elena Pacheco,  
Attorney IV*



- Purpose
- The Rule
- State Bodies
- Meetings
- Basic Requirements
- Teleconferences
- Closed Sessions
- Violations
- Government Transparency



# 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.”***



# BAGLEY-KEENE – THE RULE

**In a nutshell:**

**State bodies are required to conduct their business and deliberate at meetings that are open to the public.**



# 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.
    - » Applies *upon appointment* to the State Body.
  - » A 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 consists of three or more persons.*



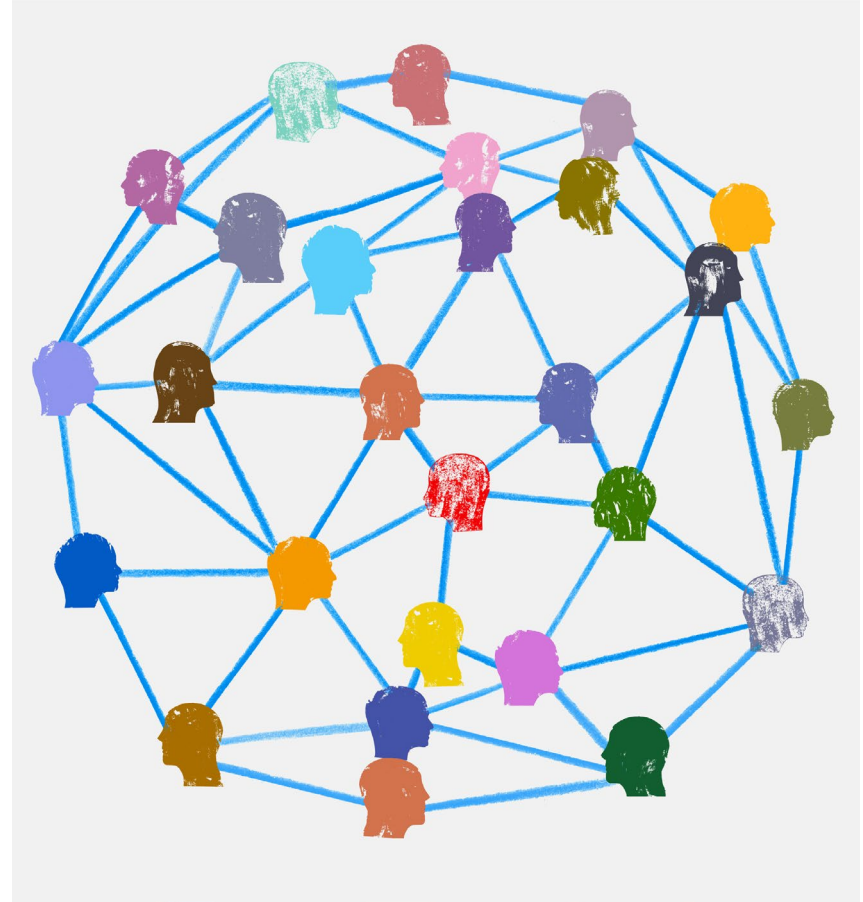
# WHAT IS A MEETING?

- **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.
  - » **Prohibition of Serial Meetings:** A majority of the members of a state body shall not 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.



# 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.***





# BASIC REQUIREMENTS - PROCEDURES

- **For an upcoming meeting, the State Body must:**
  - » Provide notice of meeting – including agenda
    - » Notice published online at least 10 days before meeting; and sent to anyone who otherwise requests notice.
    - » 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 *before or during* the state body’s discussion or consideration of the item.
  - » Unique notice and agenda requirements for emergency and special meetings.



# BASIC REQUIREMENTS - PARTICIPATION



- **Public Participation 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.”
  - » Likewise, an individual does not need to self-identify in order to speak.
  - » Public must be able to record meeting unless device is persistently disruptive.
  - » Place and manner of meeting must be non-discriminatory.
  - » No fee for attendance may be charged.



# TELECONFERENCE MEETINGS

- **“Teleconference”** means a meeting of a state body, the members of which are at different locations, connected by electronic means, through either audio or both audio and video.
- **Teleconference Meeting Requirements**
  - » Must provide a means by which the public may remotely hear audio of the meeting, remotely observe the meeting, remotely address by the body, or attend the meeting.
  - » Each location from which a member participates must be accessible to the public.
  - » Include teleconference meeting location(s) on the agenda.
  - » Post the agenda at all teleconference locations.
  - » All votes taken during a teleconference meeting must be by roll call vote.
  - » Members must appear on screen.
  - » 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.



# ALTERNATIVE TELECONFERENCE MEETINGS

Effective January 1, 2024

- **Majority Required:** Majority of members must be physically present at the same publicly noticed location.
- **Options Available:** Other members in excess of the majority may appear from either:
  - » **Remote Locations.** This is a private location; or
  - » **Teleconference Locations.** This is a publicly noticed location.
- **Narrow Exception to Majority:** If less than a majority are present at a single location, a member participating from a remote location may count towards the majority if that member has a disability that cannot otherwise be reasonably accommodated.
  - » Additional notice and approval requirements.



# ALTERNATIVE TELECONFERENCE MEETINGS

Effective January 1, 2024

- **Remote Location (Private Location) Requirements**

- » Location of member appearing remotely shall not be publicized.
- » Member appearing remotely must disclose any other individuals 18 years or older in the room with them and the general nature of the relationship with any such individuals.

- **Teleconference Location Requirements**

- » Same as previously outlined requirements including a publicly noticed and publicly accessible location.



# CLOSED SESSIONS

- **Meetings without public involvement are allowed under very limited circumstances.**
- **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.
  - » May only discuss item(s) on the agenda for the closed session.
  - » Reconvene in open session prior to adjournment and make reports on action taken, disclosures, and provide any necessary documentation.
  - » Confidentiality



# CLOSED SESSION



## Permissible Topics

- Personnel matters
- Pending litigation
- Criminal/terrorist threats to agency property/data

## Permissible Parties

- Board members
- Legal counsel
- Necessary staff, such as CEO



# 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.





# TRANSPARENCY IN GOVERNMENT AGENCIES

- **Common Law Principles for Public Meetings:**

- » **Prohibition of Bias** – public officials have a duty to exercise their powers for the benefit of the public, and are not permitted to use those powers to benefit private interests
  - Political Reform Act and public contract laws mandate that public officials who have personal or financial interests in the decision before them do not participate in the decision.
  - Prevents waste of public funds and guards against favoritism.
- » **Preserving Competition** – public contracting laws are designed to give all interested parties an equal opportunity to do business with the government
  - Public officials must protect fair competition by focusing public meetings on the merits of an issue before them and avoid discussion on items that are not on the body's agenda.
  - Public officials should avoid private discussions that could create a future perception of bias or undermine the confidentiality of an active procurement.



# QUESTIONS



## Headquarters

California High-Speed Rail Authority  
770 L Street, Suite 800  
Sacramento, CA 95814  
[www.hsr.ca.gov](http://www.hsr.ca.gov)

[Kendall.Bonebrake@hsr.ca.gov](mailto:Kendall.Bonebrake@hsr.ca.gov)

