

BAGLEY-KEENE OPEN MEETING ACT QUICK REFERENCE GUIDE

The purpose of this Quick Reference Guide is to highlight some issues under the Bagley-Keene Open Meeting Act. For a more detailed discussion, please refer to the Act itself and the “Handy Guide to the Bagley-Keene Open Meeting Act of 2003” (hereafter “Guide”) prepared by the Office of the Attorney General, copies of which were distributed with your meeting book. The discussion below contains references to the Act and to the Guide for reference purposes.

Committees (a.k.a. advisory bodies)

A body composed of three or more persons and created by the governing board is subject to the open meeting requirements. (Gov. Code, § 11121(c); Guide, at p. 2.)

Teleconferencing

The Act provides for audio or audio and video teleconferencing for the benefit of the public and the body. When a teleconference meeting is held, each site that includes a member of the body must be accessible to members of the public. All proceedings must be audible and votes must be taken by roll call. All teleconference locations must be listed on the notice and agenda. (Gov. Code, § 11123; Guide, at p. 6.)

Notice Requirements

A “regular” meeting is a meeting for which the 10-day notice is provided. This means that at least 10 days prior to the meeting, notice and the agenda have been posted on the Internet and sent to anyone who has requested notice. (Gov. Code, § 11125; Guide, at pp. 6-8.)

Special Meetings

The Board may hold a “special meeting” for limited purposes, including to consider pending litigation, proposed legislation, the purchase, sale, exchange or lease of real property and certain personnel actions. Notice of the meeting must be given 48 hours in advance to all board members and to all national wire services and notice must be posted on the Internet.

At the meeting, 2/3 of the board members must find that the 10-day notice requirement would impose a “substantial hardship” on the Conservancy or that immediate action is necessary to protect the public interest. The Board must provide a factual basis which demonstrates these consequences. (Gov. Code, § 11125.4; Guide, at p. 8.)

Urgency Items

Items may be added to the agenda provided that they are added and notice is given no later than 48 hours prior to the meeting. There must be a need for immediate action and the need for action must have come to the attention of the Conservancy after the agenda was mailed. At the meeting prior to considering the item, two-thirds of the board (or unanimously if less than 2/3 of the members are present) must vote to add the item. **ITEMS MAY NOT BE ADDED THE DAY OF THE MEETING.** (Gov. Code, § 11125.3(a)(2), (b); Guide, at p. 7.)

Closed Sessions

Closed sessions are authorized only for specific purposes. (Gov. Code, § 11126; Guide, at pp. 12-13.) These include certain personnel matters, pending litigation and to discuss real property.

The real property exception allows the Board to meet in closed session with its negotiator prior to the “purchase, sale, exchange, or lease of real property” to provide instructions to the negotiator

regarding the price and terms of payment. The agenda must identify the real property and the person or persons with whom its negotiator may negotiate. (Gov. Code, § 11126(c)(7); Guide, at p. 13.)

The real property exception does not extend to grants to assist another entity in purchasing property. In addition, only persons directly involved in the closed session as part of their official duty may attend.

Serial Meetings

The Bagley-Keene Act prohibits the use of direct communication, personal intermediaries or technological devices (e.g. electronic mail) employed by a majority of the members (for the San Diego River Conservancy, this means five voting members) to develop a collective concurrence as to action to be taken on an item by the Board. (Gov. Code, § 11122.5(b); Guide, at pp. 4-5.) A serial meeting includes a series of communications, each of which involves less than a quorum, but which taken as a whole involves a majority of the board's members.