

Hi, this is Chris Micheli of the Sacramento Governmental Relations Firm of Aprea & Micheli, and an Adjunct Professor at McGeorge School of Law.

Today's podcast is to provide an overview of local and state open meeting laws here in the state of California.

California has three types of open meeting laws that apply to local and state governmental entities.

These laws have been adopted over a number of years, and they equally apply to state agencies and departments, the Legislature, and local entities, including city councils and boards of supervisors.

Now, the open meeting acts are generally referred to Bagley-Keene, LOMA, and Brown Act. What do all those mean, and to whom do they apply?

The Bagley-Keene Act applies to state entities, the LOMA applies to the Legislature, and the Brown Act applies to local entities.

You need to be aware of all three laws so that you can properly participate and be aware of what is happening at local and state governments and the meetings of relevant legislative and executive branch entities.

Let's start with Bagley-Keene. It applies to state entities. The Bagley-Keene Open Meeting Law, generally referred to as just "Bagley-Keene," was adopted by the State Legislature in 1967, and essentially implements relevant provisions of the California Constitution which requires meeting of public bodies and the writings of public officials and agencies to be open to public scrutiny.

By the way, the California Constitution also mandates open meetings for state agencies, boards, and commissions.

Now, it's in many ways analogous to the Brown Act, which applies to meetings at the local government level, but Bagley-Keene, again, applies to state agencies. It's interesting just to read the intro to Bagley-Keene.

It says, "The people of the state 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 of the instruments that they have created."

What's the practical impact of Bagley-Keene? The Bagley-Keene Open Meetings Act is applicable to state agencies and departments. The act requires that members of the public be able to address agenda items in public meetings of different state agencies and departments.

Of course, before one has the ability to comment on such agenda items, the public has to be made aware of meetings of these state agencies.

As a result, the notice of state agencies or department meetings must be provided to any person who makes such a request -- an interested party -- in writing, at least, 10 days in advance of the meetings of those state entities.

As you would imagine, those notices must include a specific agenda, the items of business to be transacted or discussed by the state entity, and no item can be added to the agenda after the notice has been issued.

Now, there are some instances where state entities can take action on items of business that were not on the agenda, but that's in certain limited circumstances. Basically, it's limited to the instances where a majority voted that state entity has deemed an emergency situation to exist.

As you can also imagine, the Bagley-Keene Open Meeting Act requires all state agencies to conduct any meetings or functions in any of their facilities. It cannot occur where there's any prohibition on admittance of people for protected classifications.

Now, there are basically three major things that you have to understand about Bagley-Keene. What's a meeting, what's a state body, and what's an action taken?

A meeting is found in Government Code, Section 11122.5 (a). It basically describes a meeting as a congregation of a majority of the members of the state body.

This can even apply to informal gatherings, as well as meetings that are done via video conference, or conducted over the telephone by conference call.

You should also be aware the so-called "serial meetings" count towards the definition. In other words, state agency officials can't get around Bagley-Keene via a series of individual calls or meetings.

What's a state body? That's defined in Government Code, Section 11121. It basically says that every board or commission or similar body of the state that's created by statute or required by law to conduct official meetings is deemed to be a state body.

By the way, this also includes advisory boards and commissions. All of those that have been created by formal action of a state body, and that consist of three or more persons, is also deemed to be a state body under Bagley-Keene.

What's an action taken? That's defined in Government Code, Section 11122. An action means a collective decision made the members of the state body. The easiest example, of course, is where a majority vote's to take a specific action.

Now, the Attorney General has issued a statement that they cautioned against collective commitments, which the Attorney General has opined means, "Conversations that advance or clarify a member's understanding of an issue, are all example of communications that contribute to the development of a concurrence as to action to be taken by the body."

There are some exceptions for closed sessions. Those are found in Government Code, Section 11126. Closed sessions under Bagley-Keene are pretty limited.

Therefore, the appointment, employment evaluation, or dismissal or discipline of a public employee, for licensing honorary degrees, real estate negotiations, and investments, and to confer with or receive advice from legal counsel regarding pending litigation.

Now, despite having these closed sessions, they're still subject to public notice. Certain things must be disclosed, and actual actions taken must be reported in open session after the conclusion of the closed session.

By the way, if Bagley-Keene is violated, the decision of a body could be overturned so long as it's challenged within 90 days. Of course, violations can be stopped or prevented by court action.

What's LOMA, the Legislative Open Meetings Act? That's also in the Government Code like Bagley-Keene, and it binds the California Legislature.

Now, be aware of a couple of things when it comes to LOMA. Caucuses of the Legislature -- party caucuses, Democrat and Republican in both houses -- have full authority to meet in closed session.

Remember, state agencies have very limited authority to meet in closed sessions unless it's for a specified exception, like litigation or personnel actions. That's not applicable to legislative caucuses.

As you can surmise, legislators can meet informally, outside of committee hearings and floor sessions, to discuss policies so long as no formal actions are taken, and so long as less than a majority of the body's involved.

Of course, staff and other intermediaries working on behalf of legislators are not counted. As such, serial meetings of legislators or legislative staff are not prohibited. Remember, again, that under Bagley-Keene, serial meetings do count whether it's staff or board members.

Also, legislative leaders can meet with each other, as well as the Governor, in complete private, to develop policy proposals, and legislation, and the budget.

Remember, again, that designees of state agencies engaging in the same activity, that would constitute a committee, which must be done in open session. Again, that is not applicable as it concerns the California State Legislature.

Now, lastly, is the Ralph M. Brown Act which was adopted in 1953. The Brown Act applies to open meetings of counties and cities. It's found also in the Government Code, around Section 54950.

Now, the purpose of the Brown Act is to guarantee the public's right to attend and participate in the meetings of local elected bodies. It applies to city councils, the board

of supervisors, and local government bodies so that they can't hold secret workshops or study sessions.

Keep in mind that the Brown Act applies solely to California city and county governments, as well as their agencies, boards, councils, etc.

It's comparable to the Bagley-Keene Act that we first talked about that requires open meetings for state government agencies, but again, the Brown Act applies to local governments.

When the Brown Act was adopted, it made the following finding in declaration.

"In enacting this chapter, the legislature finds and declares that the public commissions, boards and councils, and the other public agencies in the state, exist to aid in the conduct of the people's business. It is the intent of the law that their actions be taken openly and that their deliberations be conducted openly."

As you can see, all local entities in California are bound by the Brown Act.

Now, what are some of the major provisions? Essentially, the majorities of decision-making bodies may not decide amongst themselves on issues within their own jurisdiction, except when they're done so in open and publicly held meetings.

As a result of the Brown Act, local agencies have to publicize where and when their meetings will occur, as well as what will be discussed on the agenda. Of course, then the public can observe those meetings.

Now, at the local level, the Brown Act requires 72 hours or 3 days' notice. Remember, that's different than the Bagley-Keene Act which requires 10 days' notice. No action can be taken by those local bodies unless an item's been placed on the agenda for consideration.

Also, the Brown Act precludes the use of secret ballots, whether in preliminary fashion or in final form. The public has the right to be heard on matters on the agenda before the decisions are made by the local city council or board of supervisors.

Also, the public has a general right to address the decision-makers on any items of concern to them, even if they're not on the agenda. You can typically find this section in the public comment period on an agenda for your local city council or board of supervisors.

Also, be aware that there are similar rules and restrictions when closed sessions are to be held. There's also a prohibition on serial meetings, and the Brown Act applies to committees and advisory bodies.

In many ways, the Brown Act and the Bagley-Keene Act have almost identical provisions, also for violation of the law. In other words, you've got to act within 90 days of the official conduct. You also have to give the local agency an opportunity to remedy its failure to comply with the law before filing a lawsuit.

I hope this summary of some of the key provisions of California's open meeting laws show the importance of ensuring public notice and an opportunity to participate in elected officials' deliberations, whether it's at the local or the state levels.

I look forward to talking with you again.