

Information/Action Item

California Student Aid Commission

Consideration of recommendations to amend the Bagley-Keene Open Meeting Act

By letter dated November 14, 2012, former Chair Barry Keene asked Senate President Pro Tempore Darrel Steinberg to establish a working group to develop recommendations to update the Bagley-Keene Open Meeting Act to account for changes in societal interaction created by electronic media. (See Tab X.a.)

The purpose of this agenda item is to provide an opportunity for Commissioners to discuss possible changes to the Open Meeting Act they may want to suggest to the Legislature.

The Open Meeting Act establishes rules for meetings of state bodies, including the Commission.

The Attorney General's Office describes the Open Meeting Act as the product of the Legislature's decision that the public must have a place at the table when a state body sits down to discuss and decide its issues.

By reserving this place for the public, the Legislature has provided the public with the ability to monitor and participate in the decision-making process. If the body were permitted to meet in secret, the public's role in the decision-making process would be negated.¹

Open Meeting Act requirements that may be perceived to be inefficient are directly related to the need for the public to have access to the state body's discussions and consensus building.² Thus, changes to the Open Meeting Act that may avoid inefficiency, will need to be balanced against the public's right to access.

One such "inefficiency" arises from the Open Meeting Act requirements for a teleconference meeting. The state body must issue a notice of the meeting and list the location from which each member of the state body will be physically present.³ Each location must be accessible to the public, the public must be able to hear the meeting at each location, and the public must be able to address the state body from each location.⁴

¹ California Attorney General's Office, *A Handy Guide to The Bagley-Keene Open Meeting Act 2004 (2004)* ["Handy Guide"], p. 2.

² See *Handy Guide*, pp. 2-3.

³ Govt. Code, §§11125(a), 11123(b)(1)(C),(B), and (F).

⁴ Govt. Code, §11123(a).

This prevents members of state bodies from participating from a location other than that listed on the meeting notice. For example, they cannot participate from their cars using a car phone.⁵ They cannot use cell phones unless on speaker. If they participate from their homes, they must open their homes up to the public and must use a speaker-phone.

With the advent of audio and video streaming of meetings of state bodies over the internet, however, it can be argued that the public need for access to each location has been alleviated. All the public proceedings of the state body, not otherwise exempted or excepted from the Open Meeting Act, would be available from any computer connected to the internet. The public, however, can counter that eliminating the opportunity to observe each member of the state body as they participate in a teleconference meeting erodes public access. For example, several members who are participating in the teleconference from the same location could mute their phone or go to another room, have extensive off-record discussions among themselves, then unmute the phone, or return from the other room, and continue with their on-record participation. The chance that the public may attend a teleconference from any location could be characterized as a preventive measure to discourage deliberate evasion of the Open Meeting Act.

The possibility of counter-arguments need not prevent the Commission from making recommendations if the Commission concludes that changes to the Open Meeting Act are warranted. Public discussion at legislative policy committees will provide the opportunity for arguments and counter-arguments to be aired and considered by the Legislature.

Staff will be available to answer questions during the Commissioners' discussion of this agenda item.

Responsible Person(s): Keri Faseler Tippins
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⁵ See Handy Guide, p. 7.