

**Information/Action Item*****Strategic Policy and Planning Committee*****Consideration of recommendations for revisions to the Bagley-Keene Open Meeting Act**

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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 4.a)

The Commission referred this matter to the Committee to discuss possible changes to the Open Meeting Act they may want to recommend 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.

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. 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. 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.

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. 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 be 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.

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

***Responsible Person(s):*** Keri Tippins  
General Counsel



STATE OF CALIFORNIA

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November 14, 2012

The Honorable Darrell Steinberg  
Senate President pro Tempore  
California State Senate  
State Capitol, Room 205  
Sacramento, CA 95814

Dear Pro Tem Steinberg,

I am writing to you in three capacities: as Chair of the California Student Aid Commission, as the Senate appointee to the California Student Aid Commission and as a former State Senator, specifically as one of the co-authors of the Bagley-Keene Open Meeting Act (Government Code Section 11120-11132). I believe the Bagley-Keene Open Meeting Act is sorely in need of updating.

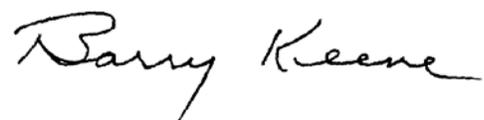
Established in 1967, this act requires open meetings for California State boards and commissions. Generally, it requires these bodies to publicly notice their meetings, prepare agendas, accept public testimony and conduct meetings in public unless a specific exemption of the act permits a topic to be discussed in closed session.

When established over 40 years ago, this act did not and could not factor in many of the electronic and technological options available and widely used today to communicate (e.g. email, SKYPE, Facebook, Twitter, and Blackboard to name a few). As a result, it is my impression that this act, rather than furthering open communication, may now have the unintended effect of actually limiting it. For example, use of email is severely restricted and other methods of written electronic communication are not available. I have had discussions with members of local governing boards and their staff who identify similar constraints. On the Attorney General's own website it acknowledges that the act creates unnatural communication patterns and hampers efficiency.

Therefore, I am requesting that you consider convening a working group of your relevant staff to explore this issue and, if appropriate, to develop recommendations for updating my namesake act in ways that would both allow for the use of electronic medium by boards and commissions and, at the same time, continue to provide and possibly even enhance public participation with such agencies. I, and several other Student Aid Commission members, specifically

Commissioner Nancy Anton, one of your former staff members, would be happy to assist you and your staff in any such endeavor.

Sincerely,

A handwritten signature in black ink that reads "Barry Keene". The signature is written in a cursive, flowing style.

Senator Barry Keene (Ret.)  
Chair

CC: Commissioners of the California Student Aid Commission  
Mr. Mufaddal Ezzy, Policy Consultant, Senate Pro Tem Darrell Steinberg's Office