

The logo for Renne Public Law Group, featuring the letters 'RPLG' in a bold, blue, serif font, centered within a white rectangular box.

RPLG

Renne Public Law Group®

The background of the slide is a photograph of a classical building with large, white, fluted columns and a pediment, set against a blue sky with light clouds. The image is slightly faded to allow the text to be read clearly.

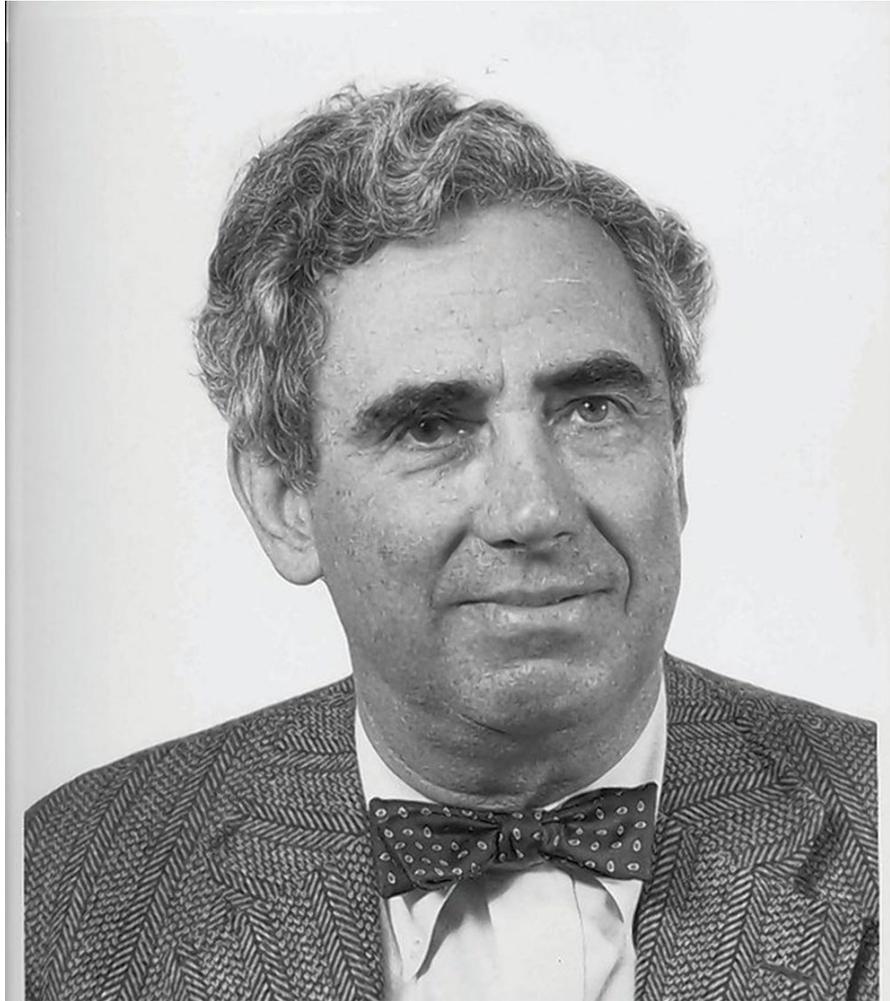
Bagley-Keene Open Meeting Act

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July 11, 2022

Bagley-Keene Basics

- I. Why?
- II. State Bodies
- III. Meetings/Unlawful Meetings
- IV. Meeting Types, Notices, and Agendas
- V. The Rights of the Public
- VI. Closed Sessions
- VII. Enforcement

I. Why?



“Your Secret Government”

by SF Chronicle Reporter

Mike Harris

Why?

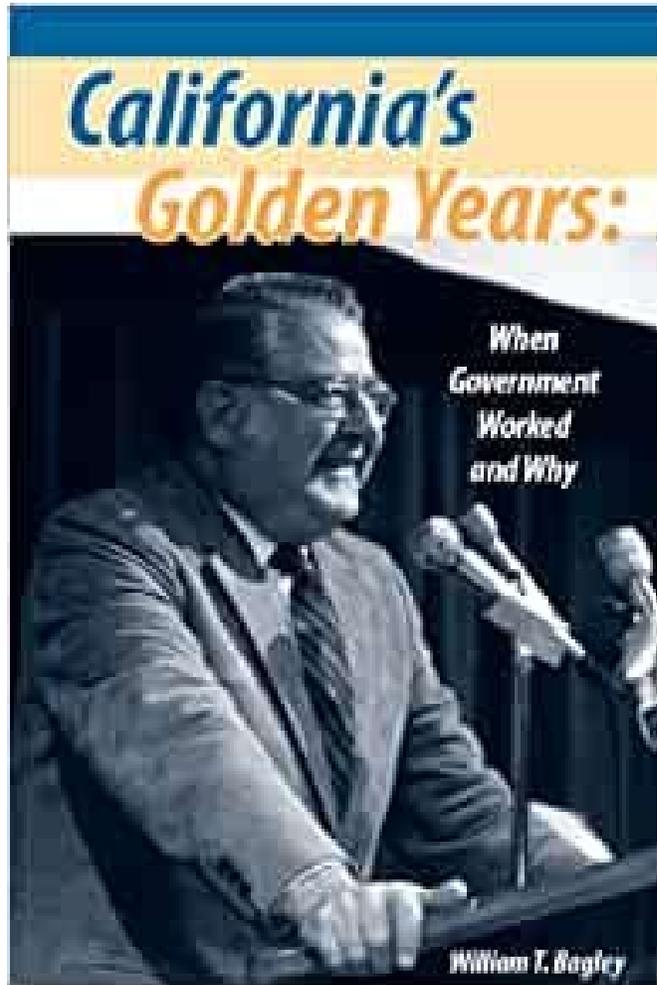


The Ralph M. Brown Act:

Open Meetings Law for local
“legislative bodies”

Govt. Code § 54950 *et. seq.*

Why?



The Bagley-Keene Act – Why?

“Public agencies exist to aid in the conduct of the people’s business and the proceedings of public agencies must be conducted openly so that the public may remain informed.”

Govt. Code §11120

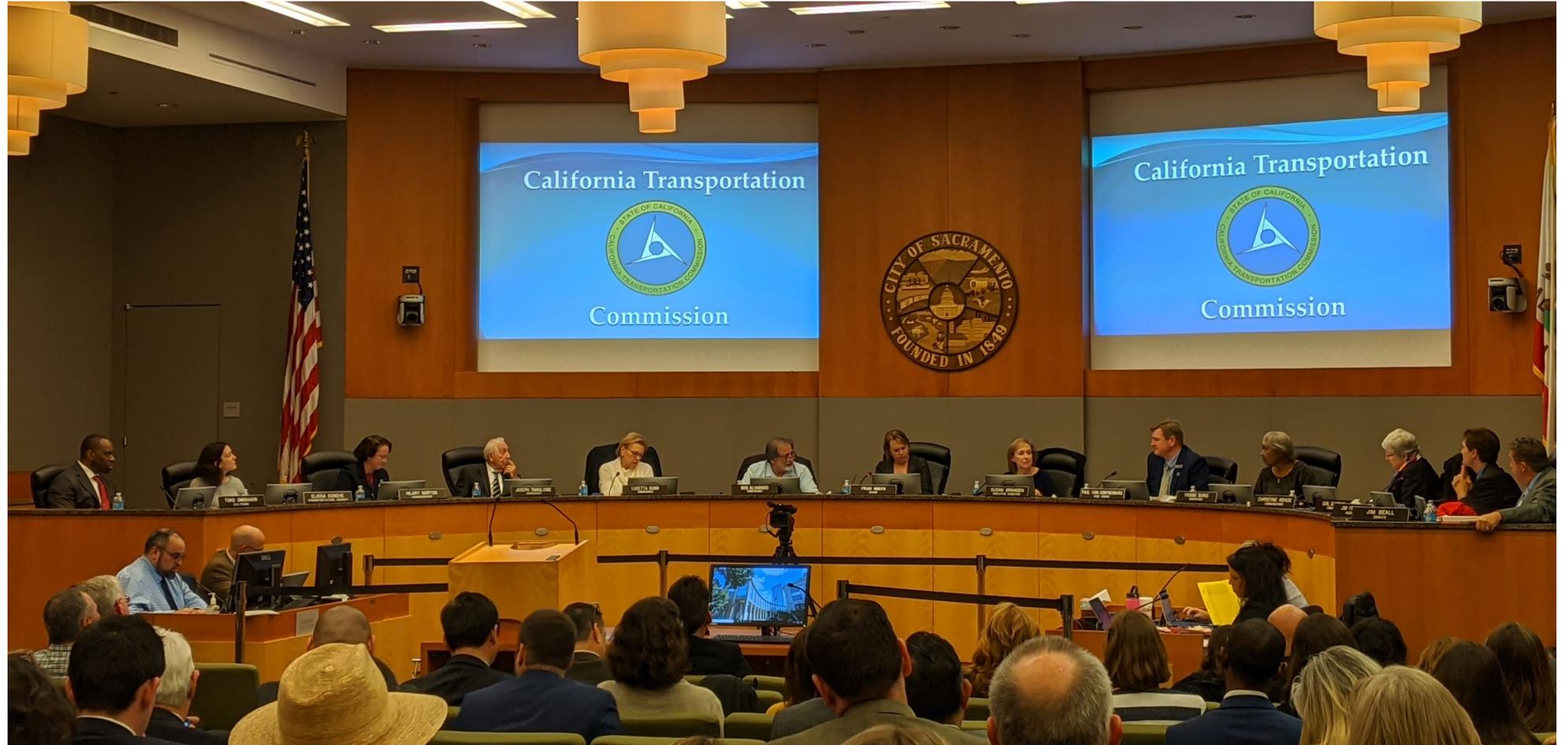
Wait, there's more

"The people of this 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 over the instruments they have created."

Govt. Code §11120



II. State Bodies



II. State Bodies

“Every state board, or commission, or similar multimember body of the state that is **created by statute** or required by law to **conduct official meetings** and every commission created by executive order.”

This Committee is a state body.

Govt. Code § 11121(a)

II. State bodies (create new state bodies)



This Committee creates another state body if:

- It creates a multimember body and **delegates authority** to it.
- It creates an **advisory body** by “**formal action**” of 3 or more persons.
- The Subcommittees are state bodies.

Govt. Code § 11121(b)(c)

III. Meetings/Unlawful meetings



Meeting:

Any congregation of a **majority** of the members of a state body at the same time and place to **hear, discuss, or deliberate** upon any item that is within the subject matter jurisdiction of the state body to which it pertains.

Govt. Code § 111222.5(a)



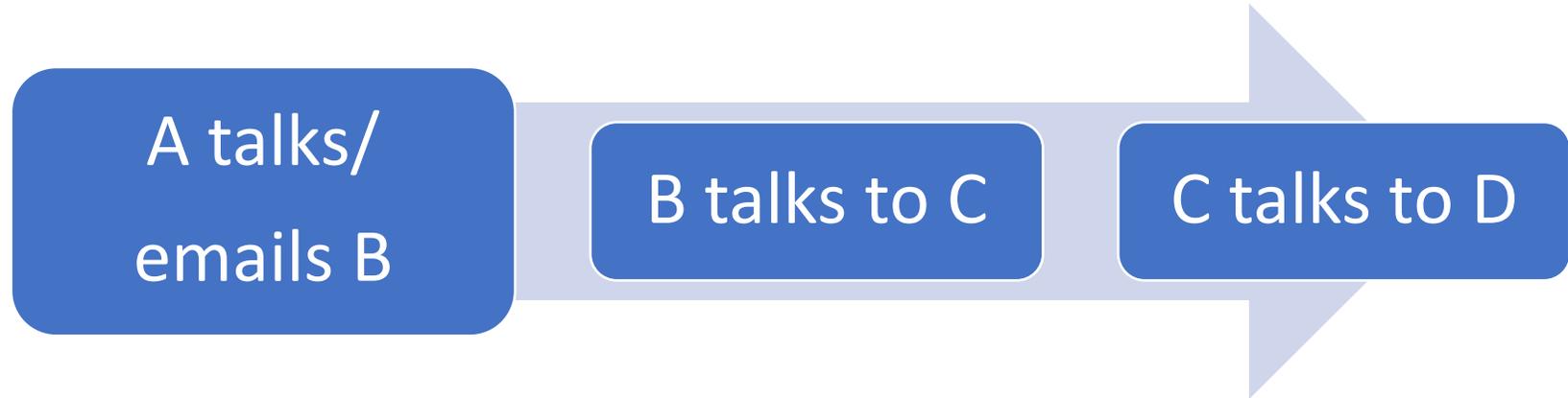
Unlawful Meetings – Seriatim meetings

A majority of the members of a state body shall not, outside of a meeting authorized by this chapter, 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.



Govt. Code §11122.5(b)

Serial Meetings



A, B, C, and D have a joint conversation, by phone rather than in person

Nonmeetings- Attendance by a majority OK

- Conference
- Meeting open to the public on matter of state concern
- Purely social or ceremonial occasion
- Attendance at a subcommittee meeting if non-subcommittee members attend as “observer”

Caveat: No discussion of Committee business



V. Meeting Types, Notice and Agendas



Types of Meetings

Regular

Special

Emergency



Teleconference Meetings

Regular Meeting

- Notice and agenda on the internet and to anyone who requests notice in writing **10 days in advance**
- Notice of Committee meeting constitutes notice of its **Subcommittees** provided that:
 - Business to be discussed on agenda;
 - Specific **time and place of subcommittee** meetings **announced** during Committee meeting
 - Subcommittee meets “**within a reasonable time** of and **nearby**” the Committee
- If Subcommittees meets not during a Committee meeting, notice and **agenda required**.

Govt. Code § 11125

Special Meeting – Very Unlikely

48 hours notice BUT only to consider:

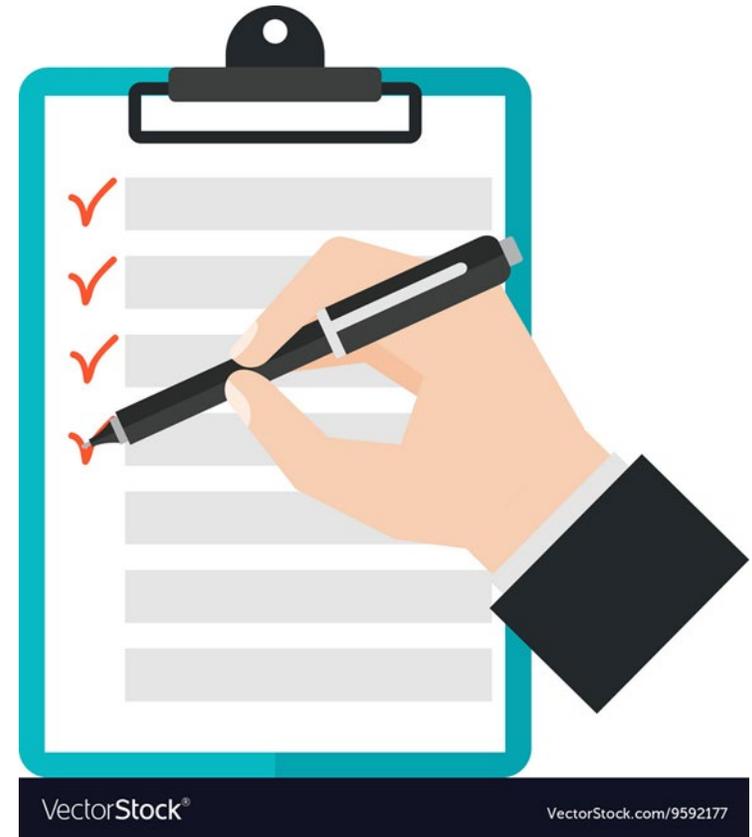
- Pending litigation
- Proposed legislation
- Issuance of a legal opinion
- Disciplinary action against an employee
- Real property purchases/sales
- Action on a loan or grant
- To consider confidential final draft audit report from Bureau of State Audits
- Appoint interim executive officer

Govt. Code § 11125.4

Agendas Requirements (all meetings)

- Brief description of the items to be transacted or discussed. (Usually 20 words or fewer)
- Agendas and attachments distributed to members prior to or during meeting available to public at meeting if prepared by Committee or after if prepared by some other person.

Govt. Code § 11125, 11125.1



Why does it matter what's on the Agenda?



Except under **emergency circumstances**, a state body **cannot act** on items of business not on the agenda.

Govt. Code § 11125.3

Teleconference Meetings



Teleconference Meetings

“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.”

Govt. Code § 11123



Important!

Even if the Committee is not meeting by teleconference, it may provide **additional locations for the public** to observe or address the state body by audio/video.



Regular Teleconference Requirements

- Same notice and agenda requirements
- All teleconference locations identified in the notice and agenda
- Agendas must be posted at all locations
- Public entitled to appear at all locations
- All votes by roll call

Govt. Code § 11123



(Pandemic) Teleconference Rules

Background:

- Governor's Executive Orders
- AB 361 – expired January 31, 2022
- SB 189 –enacted June 30, 2022.
Extends the pandemic-related rules in Govt. Code § 11133 until December 31, 2023

Pandemic Teleconference Requirements

- All teleconference locations identified in the notice and agenda
- Agendas must be posted at all locations
- Public entitled to appear at all locations

NOT REQUIRED

- Same notice and agenda requirements
- Provide **notice** to the public of **right to observe** and offer **public comment**
- Provide **procedure** to **access** meeting.
- Take action by roll call vote
- Use sound discretion and **reasonable efforts** to otherwise comply with the Act.

REQUIRED

Teleconference for Advisory Committees – Non pandemic (Subcommittees)

- Same agenda and notice requirements
- Must be a primary physical location where public can attend and participate
- A quorum must be present at physical location
- 24 hours notice of any member participating remotely
- Minutes list members who participate remotely
- All decisions by rollcall vote
- Information to public about remote participation

Govt. Code § 11123.5

V. The Public's Rights



Right to public comment

Right to comment on every agenda item (action or discussion) before action is taken or discussion concluded:

Unless

A subcommittee composed solely of members of this Committee has previously heard the item and the item is substantially the same

Govt. Code § 11125.7



Rights of the Public



- No conditions on attendance - § 11124
- No requirement to give name - § 11124
- Right to **record** meetings § 11124
- Right to **criticize** the policies, programs, services, acts or omissions of the state body (11125.7(d))

Limitations on Public Comment

- OK to adopt rule limiting the **total amount of time** for public comment per issue
- Ok to limit **time per speaker** (three minutes)
- But speaker using a **translator** or translator technology gets **double the time**

Govt. Code §11125.7.



VI. Closed Sessions



Must be expressly authorized

- Personnel matters
- Salary negotiations
- Real Estate negotiations
- Security threats
- Confer with legal counsel regarding pending litigation
- Exceptions related to specific boards

Govt. Code § 11126

VIII. Enforcement



Enforcement

- Attorney general, district attorney, or “any interested person” can seek a **court order**:
 - Stopping or preventing violations
 - Voiding an action taken in violation of the Act
- Court can award **attorneys' fees** and costs
- Knowingly attending a meeting in violation of the act is a **misdemeanor**

Govt. Code §§ 11130.3, 1130.5, 11130.7

The End!!!





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Thank you!

Questions?