

Bagley-Keene Open Meeting Act Training

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Roadmap

- Review Bagley-Keene fundamentals
- Review application of Bagley-Keene to ALJ decisions and Board's role in quasi-judicial proceedings

Bagley-Keene Fundamentals

- Applies to meetings of state bodies
 - 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...”
- State body
 - Definition includes any multimember body (1) created by statute; (2) required by law to conduct official meetings; or (3) exercising delegated authority of a state body

Bagley-Keene Fundamentals (cont.)

- Meeting requirements
 - Notice and agenda provided to public 10 days before meeting
 - Meetings open to the public unless closed session authorized
 - Serial meeting rule
- Teleconference meetings
 - Traditional rules
 - Post-COVID, “remote location” rules (expire 1/1/2030)
- Closed session

Bagley-Keene Fundamentals (cont.)

- Meeting requirements (cont.)
 - Public comment
 - Bagley-Keene (Gov. Code § 11125.7)
 - State body generally must provide opportunity for public comment on each agenda item
 - But state body can regulate public comment
 - “The state body may adopt reasonable regulations to ensure that the intent of subdivision (a) is carried out, including, but not limited to, regulations limiting the total amount of time allocated for public comment on particular issues and for each individual speaker.”
 - CalPERS Public Comment Regulation (2 CCR § 552.1)
 - Formalizes generally accepted standards re public comment
 - Provides up to 3 minutes per speaker per agenda item (non-transferable)
 - Presiding officer may increase or decrease time limit in viewpoint neutral manner
 - Several clear exceptions where state body *not* required to provide opportunity for public comment, including
 - Adjudication of administrative law judge (ALJ) decisions

Bagley-Keene and ALJ Decisions

- Statutory Basis
 - California Administrative Procedure Act (“APA”) (see Gov. Code § 11500 et seq.)
 - Government Code section 20134
 - “The board may, in its discretion, hold a hearing for the purpose of determining any question presented to it involving any right, benefit, or obligation of a person under this part. Where a hearing is held, the proceedings shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3, and the board shall have all of the powers granted therein; except that Section 11508 shall not apply, and the hearing shall be held at the time and place determined by the board.”

Bagley-Keene and ALJ Decisions (cont.)

- General timeline for Member Appeals
 - Member formally appeals CalPERS decision regarding their benefits
 - Administrative Law Judge (“ALJ”) hears the case in the first instance
 - Quasi-judicial proceeding, essentially like a trial
 - ALJ issues proposed decision to CalPERS for the Board’s consideration

Bagley-Keene and ALJ Decisions (cont.)

- Board must act within 100 days of receipt of the ALJ's proposed decision
 - Failure to act makes the proposed decision final
- APA sets forth four actions Board may take on a proposed decision
 - Adopt proposed decision
 - Adopt proposed decision with minor/technical changes
 - Reject proposed decision and remand for taking of additional evidence
 - Reject proposed decision and conduct full Board hearing

Bagley-Keene and ALJ Decisions (cont.)

- Role of the Board – impartial adjudicator
 - Exclusive record principle
 - Separation of adjudicatory and prosecutorial functions
 - Board's independent counsel
 - Ex parte communications
 - Recusal
- Contrast process to adopt precedential decisions

Questions?