



ENGR OSSMENT*



Summer-2011

By LEGISLATIVE INTENT SERVICE, INC. www.legintent.com 1-800-666-1917

Open Meetings and Public Records

For almost 60 years, California's legislated public policy has been that public agencies exist to aid in the conduct of the people's business and that the proceedings of these public agencies be conducted openly so that the public may remain informed. Under Gov't Code § 11120, the legislature's intent is expressed as follows: "it is the intent of the law that actions of state agencies be taken openly and that their deliberation be conducted openly."

Since California's earliest codification effort in 1872, there were some general code sections that acknowledged the existence of public writings and public records but the statutes did not define them. For nearly 100 years, the Attorney General was called upon to define a public record under different circumstances. Assembly member ("A/M") **Ralph M. Brown's** bills in the 1950's and A/M **William T. Bagley's** bills in the 1960's enacted a comprehensive statutory scheme to address this gap. These open meetings and public records laws have been updated since then with new laws or amendments. Below, we highlight the more well-known of these bills. *Call us if you have any questions!*

The Brown Act

When the "Brown Act" was enacted in 1953, it was the legislature's intent that the actions of public commissions, boards and councils and other state public agencies be *taken* openly, with deliberations *conducted* openly, because they "exist to aid in the conduct of the people's business." A/M Brown, chair of the Assembly Judiciary Committee, introduced **AB 339** after its Interim Judiciary Committee studied and reported on the "so-called secret government hearings" where local agencies held special meetings without notice to the public. Gov. Earl Warren supported the Interim Committee's study, stating:

"There is a tendency on all levels of government to withhold information from the public because it might be embarrassing. I have found it necessary to fight the trend in my own state administration. It is the duty of every public executive to do the same thing." (Speech by Gov. Warren to Press Club in Oregon)

Bagley Bill

In 1967, A/M Bagley, chair of the Assembly Committee on Judiciary and a member of the Assembly Committee on Government Organization, carried **AB 495** to accomplish the following:

"The bill provides a uniform set of rules for the conduct of meetings of all state agencies and provides, with certain exceptions, that all such meetings shall be open to the public. Essentially the provisions of A.B. 495 provide a single open meeting law for state agencies that is similar to the Ralph M. Brown Act, which governs the meeting of local legislative bodies." (Ltr to Gov. Reagan, 08/15/1967)

The Brown Act was applicable only to local agencies, such as school boards, city councils and county boards of supervisors. This 1967 legislation was a comprehensive open meeting law for state agencies and intended as a companion measure to the 1953 Brown Act. In 1967, Governor Reagan stated that A/M Bagley's bill would extend open meeting coverage to about 60 state agencies and declared that

". . . this legislative guarantee of the public's right of access to meetings of state agencies is a vital ingredient of the democratic process and follows my pledge to keep the people of California informed of their Government." (Press Release, 9/4/1967)

Public Records Act

One year later, in 1968, the California Public Records Act was enacted to address both the public's right to know the contents of public records and the public's interest in forbidding the release of information when such release would not be in the best interest of the public. Introduced by A/Ms Bagley and Harvey Johnson, **AB 1381** defined public records and required public records to be open to inspection during office hours. This bill was introduced following a six-month study by an advisory committee to the Assembly Judiciary Committee.

Grunsky-Burton Open Meeting Act

The California Legislature itself got into the open meetings act in 1973 and then again in 1989, when it passed a revision of the earlier open meetings law applicable to all meetings of the Assembly and Senate and the committees and subcommittees. In 1973, Sen. **Donald Grunsky** and A/M **John Burton**, co-authors, carried **SB 278** to "increase the public's trust in the Legislature generally by placing the requirements for open meetings into statutes, rather than the Legislature's Joint Rules." (Grunsky letter to Gov. Reagan, 09/14/1973)

State Agency Open Meeting Act

In 1980, Sen. **Barry Keene**, a major proponent of the Brown Act, carried **SB 1850** to broaden public disclosure of public meetings to include written materials provided to members of a board at its public meetings. The bill also expanded the list of public entities under the open meeting laws' purview, such as state agencies and advisory committees, subcommittees and bodies of a state agency, which must provide one week advance notice of meetings upon request. SB 1850 was known as the "State Agency Open Meeting Act," and Sen. Keene intended this bill to strengthen state and local government open-meeting laws by guaranteeing access to more government meetings, and to their agendas and background information.

The Bagley-Keene Act

In 1981, the statutes affecting open meetings under the State Agency Open Meeting Act [Government Code § § 11120, et seq.] were renamed to be "The

Bagley-Keene Open Meeting Act" after passage of Sen. Keene's bill, **SB 879**. This bill further strengthened the open meeting laws by requiring state boards and commissions to follow the same strict-emergency-meeting rules as local governments. In his press release, Sen. Keene explained the rationale for this bill:

"Citizens need to know what their government agencies are doing – and considering – so they can participate effectively,"

"Government bodies sometimes need to meet on short notice in genuine emergencies, but unelected state boards and commissions should live with the same emergency-meeting procedures as local governments,"
(Press Release, 09/09/1981)

Electronic Devices and Public Meetings

Over the years, various bills have been enacted to continue strengthening public meetings laws. For example, recent enactments relating to "serial meetings" expressly prohibited the use of direct communication, personal intermediaries, or *technological devices* to develop a collective concurrence as to action to be taken on an item by the members of the state body outside of an open meeting. Also, when a person communicated individually with various other members, a "serial meeting" had occurred. So, in 2008, **SB 1732** prohibited a majority of the members of a "local" legislative body, outside of a meeting authorized by the Brown Act, from using a series of communications of any kind, directly or through intermediaries, to discuss, deliberate, or take action on any item of business within the subject jurisdiction of the legislative body. Then, in 2009, **AB 1494** amended the Bagley-Keene Act's serial meeting prohibition to make it consistent with the Brown Act's serial meeting prohibition.

Questions? Contact Us At:

Tom Stallard, Esq., owner,

tstallard@legintent.com

Maria Sanders, Esq.,

msanders@legintent.com

Jenny Lillge, Esq.,

jlillge@legintent.com

712 Main Street, Woodland, CA 95695

(800) 666-1917 • Fax (530) 668-5866 • www.legintent.com

© Copyright Legislative Intent Service, Inc. All rights reserved.