  
**BAGLEY KEENE  
PRESENTATION**

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State Council on Development Disabilities  
July 21, 2016

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**Good Government Laws  
CA Examples**

- Bagley Keene Act (state bodies)
- Ralph M. Brown Act (local bodies)
- Political Reform Act (reporting and conflict of interest)

• An important purpose: Transparency

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**Good Government Laws  
Impetus – Brown Act**

- 1952: San Francisco Chronicle 10 part series called "Your Secret Government" by writer Michael A. Harris
- 1953: Open meeting law for city councils, county boards of supervisors, school boards

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Good Government Laws  
Impetus – Bagley Keene

- 1966: California Legislature changed from being part time to full time
- 1967 (Jan): Governor Reagan in his inaugural address spoke of the "problem of government growth" and highlighted that "government is the people's business"
- 1967 (Sep): Bagley Keene Act enacted

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Good Government Laws  
Impetus – Political Reform Act

- 1972 (Jun): Watergate break in and Washington Post coverage begins
- 1973: Senate Watergate committee begins its nationally televised hearings
- 1974: Political Reform Act (Proposition 9) passed by the voters

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Good Government Laws  
Impetus - Context

- These laws that often seem burdensome now were triggered by contemporary events
- Public truly believed that information was being hidden and that government needed to be scrutinized
- Bagley Keene Act meant to address these issues

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Bagley Keene Act  
Challenges

- These laws attempt to provide transparency, BUT
- They also present challenges

What are some challenges you have faced with the Bagley Keene rules?

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Bagley Keene Act  
Challenges

- *Too Much Sun* report by the Center for Collaborative Policy (2003)

Some challenges are:

- Determining when the Bagley Keene rules apply
- Planning for and holding meetings
- Planning for and holding subgroup and subcommittee meetings

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Bagley Keene Act  
Challenges

- Noticing, posting agendas
- Inefficiency
- Discussion limitations
- Packed agendas
- Deliberative challenges
- Threats to confidentiality
- Inability to caucus
- Fiscal challenges
- Inability to fully use electronic communication

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Open meetings – Bagley Keene Act  
Purpose

The public policy of the state is that:

The "people's business" is to be conducted  
openly.

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Open meetings – Bagley Keene Act  
Purpose

Lets the public know:

- When the committee is having a meeting and what will  
discussed
- That there is a chance for the public to comment on  
committee business
- How committee decisions are made

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Bagley Keene Act  
The Rules

Let's get started.....

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**Authorities**

- Bagley Keene Act: Government Code Sections 11120 et seq.

**Interpretation of the Act:**

- Court cases
- AG Opinions
- AG Guidance (2004 Publication)

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**The Bagley Keene Act & The Brown Act**

- To the extent provisions of the two Acts are parallel, reasoning used to interpret the Brown Act may be equally applicable to Bagley Keene provisions. (See *Southern California Edison v. Peevey* (2003) 31 Cal.4th 781, *North Pacifica v. California Coastal Commission* (2008) 166 Cal.App.4th 1416.)
- Can be helpful when trying to advise on an ambiguous situation
- Brown Act: Government Code Sections 54950 et seq.

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**SCDD Staff:**

- Bagley Keene Act and its provisions should be a resource to you.
- Please always ask Legal if you have any questions about the application of the rules or a particular situation involving a committee you work with.

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**Who must follow the Bagley Keene Rules?**

- All state bodies and their members
- "State body" is defined by GC 11121
  - ↳ This section addresses multimember entities based on how they were created and what authority they exercise
- GC Section 11121.1 provides some exceptions

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**Who must follow the Bagley Keene Rules?  
Multimember Bodies – General Rule**

Under the general rule:

- A multimember body
- Created by statute or required by law

Guidance from the Attorney General's office:  
If a body is created by statute, it is covered by the Act regardless of whether it is decision-making or advisory.

GC Section 11121(a)

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**Who must follow the Bagley Keene Rules?  
Multimember Bodies – Delegated Authority**

- Multimember body of a state body
- Exercises any authority delegated to it by that state body

GC Section 11121(b)

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Who must follow the Bagley Keene Rules?  
 Multimember Bodies –  
 Advisory, Created by Formal Action

- Advisory multimember body of a state body
- Created by:
  - formal action of the state body
  - or
  - formal action of any member of the state body
- Consists of 3 or more persons

GC Section 11121(c)

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Who must follow the Bagley Keene Rules?  
 Multimember Bodies – Determined by Member

- A multimember body, whether operated by the State or a private corporation
- Has at least one member who:
  - is a member of a state body
  - in his or her official capacity represents the state body
- Multimember body is supported in whole or in part by representative's body.

Per AG guidance, this isn't a common situation but you should review the Bagley Keene rules whenever a member of a state body will sit as a representative on another body.

GC Section 11121(d)

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Open meetings – Bagley Keene Act  
 What is a meeting?

The Bagley Keene rules apply to "meetings."

In general terms, a meeting is:

- A congregation ("get-together") of
- A **majority** of the members of the committee
- **To hear, discuss, or deliberate**
- **On an item within the subject matter jurisdiction of the state body.**

GC Section 11122.5

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Open meetings – Bagley Keene Act  
Majority

- A "majority" is more than half of the official members of the state body.

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Open meetings – Bagley Keene Act  
Serial Meetings

Section 11122.5 of the Act talks about a congregation of majority members "at the same time and place" BUT....

The Bagley Keene Act prohibits talking or emailing among a majority of committee members about a committee matter outside of a noticed public meeting.

- GC Section 11122.5(b)(1)

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Open meetings – Bagley Keene Act  
Serial Meetings

Communications outside of a noticed public meeting that go to a majority of members of a state body are sometimes called a "serial meeting."

Types of serial meetings

- Chain of communication
- Hub and spoke communications
- Other configurations or links of communications

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**Bagley Keene**  
"Chain" of Communications Serial Meeting

One member talking to another member about a state body's matter who talks to another member, and so on, can create problems.



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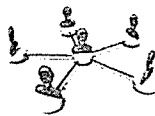
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**Bagley Keene**  
"Hub and Spoke" Communications Serial Meeting

One member talking to one member about a state body item and then separately to a second member and then to a third member, and so on, can create problems.



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**Bagley Keene**  
"Intermediaries"

Communications made through representatives or "intermediaries" can create a serial meeting.



Example: A non-member who has already spoken with a few members may talk to another non-member who then speaks with another member. If a majority of members ultimately receive the communication, then you can have a serial meeting.

Note that an attorney can be an intermediary who creates a serial meeting by polling members.

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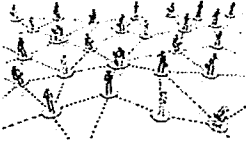
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**Bagley Keene**  
Other Linked Communications

Any problems with this scenario?

**Remember:**  
Whether a majority of the body has been part of the communication is important as is the subject of the communication.



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**Serial Meetings**

**MAIN POINTS:**

- Discussions outside of public meetings could break Bagley Keene Act rules
  - Depends on the issue discussed
  - Depends on the number of members involved
- Phone calls, emails and text messages count!
- Note that teleconferences are permitted but certain rules apply.

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**Meetings – Teleconferences**

- Teleconferences are "meetings"
- All Bagley Keene rules still apply
  - ↳ Notice rules: Each teleconference location must be properly noticed
- Votes are taken by roll call

GC Section 11123

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31

### Meetings – Teleconferences

#### Teleconference Location

- Participation in the meeting may **only** be from one of the noticed locations:
  - A person at a location that was not listed in the notice may not comment, whether or not the person is a member of the state body.
  - Note that the rules do not prohibit people from monitoring the meeting in "listen only" mode from any location.

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32

### Meetings – Teleconferences

#### Teleconference Location

- At least one member of the state body must be physically present at the location listed on the notice.
- Location must be accessible to the public.
- Location must be ADA compliant.
- The open session portion of the meeting must be audible to the public at the teleconference location.

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33

### Notice Rules – Regular Meeting

- Notice of regular meeting: at least 10 days in advance
- Notice must include:
  - Date, time, and place of the meeting
  - The name, address and phone number of a person who can give more info
  - Website address where the notice is posted
  - Short description of each item to be discussed  
The statute says that the description generally doesn't need to be more than 20 words.
- Post online and send to all members and people who request it.  
(GC Section 11125.)

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**Notice Rules –  
Special Meetings**

Special meetings can be held in limited circumstances to address matters such as:

- Pending litigation
- Proposed legislation
- Disciplinary action involving a state officer or employee
- Real estate purchases/sales

GC Section 11125.4

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**Notice Rules –  
Special Meetings**

- Notice requirement for Special Meetings is 48 hours
- Distribute notice to:
  - To the members of the state body
  - To national press wire services – provides notice to newspapers, radio, television
  - By posting on the internet
- At the beginning of the meeting, the state body must make a finding that:
  1. The 10 day notice rule will "cause substantial hardship on the body" or
  2. "Immediate action is required to protect the public interest."

Finding must be adopted by 2/3 vote of the body or, if there is less than 2/3 of the members present, a unanimous vote.

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**Notice Rules –  
Emergency Meetings**

• Used in very rare instances for an "emergency situation" such as:

- Work stoppage or activity that impairs public health or safety
- Crippling disaster that impairs public health or safety

- Notice: 1 hour prior to the meeting
- Same notice requirements as for the Special Meeting

GC Section 11125.5

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### Public Participation

Under the Act:

- Meeting materials are public records and must be available to the public
- May not require anyone to give their name as a condition of attendance at the meeting.
- Members of the public must be given the opportunity to comment on each agenda item before or during the state body's consideration of the item.
  - The state body may adopt rules to limit the total amount of time for public comment and for each individual speaker.

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### Public Participation

- Members of the public are permitted to record and broadcast the meeting unless there's a persistent disruption.
- If a meeting is disrupted ("willfully interrupted") by a group of people, the state body can order that the meeting room be cleared and continue with the session.
  - People not involved with the disruption can be readmitted
  - Members of the news media must be allowed to stay unless they participated in the disruption.

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### Closed Session

- All meetings must be open to the public unless a "Closed Session" exception applies.
- Exceptions are specifically listed in the Act.
- Agenda should cite the statutory section authorizing the closed session.

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**Closed Session  
Some Exceptions:**

- Personnel matters such as public employee appointment, employment, performance evaluation, dismissal.
  - Employee compensation discussion must occur in open session
  - For disciplinary matters, notice must be delivered to the employee at least 24 hours before meeting
  - Must report out in open session action taken to appoint, employ, or dismiss a public employee.
- Real estate transactions
  - Purchase, sale, exchange, lease

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**Closed Session  
Some Exceptions**

- Pending litigation matters
  - This litigation exception is the exclusive expression of the attorney-client privilege. All other expressions of the privilege are "abrogated" by the Act.
  - Attorney must be present.
  - The Act contains specific criteria for determining whether litigation is "pending"
  - Legal Counsel must prepare a memo and follow procedural requirements.

GC Section 11126(e)

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**Closed Session  
Other Procedural Requirements**

- Minutes must be taken but are confidential, not considered public records, and available only to the members (or if there is a open meeting violation, to a reviewing court).
- After the closed session, the state body must reconvene in public session.

See GC Section 11126 and Section 11126.1

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Bagley Keene Act  
Things to Remember

- Calendar - don't miss that 10 calendar day deadline
- Notice all teleconference locations
- Report the vote of every member
- No secret ballots
- No proxy votes

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44

Open meetings – Bagley Keene Act  
Things to Remember

- No emailing or texting regarding an agenda item during a meeting
  - Public cannot hear or read what's being said
- Materials given to members should be available to the public at the same time
- Plan and control communications involving members
- Only hold closed session if there is statutory authority for doing so

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Open meetings – Bagley Keene Act  
Penalties

- State body's decision or action can be overturned ("null and void")
  - Action must be brought within 90 days
  - By any interested party
- Can be sued to stop or prevent future violations
- Compel state body to record closed sessions
- Lawsuit can result in costs and attorneys fees
- A person can be charged with a misdemeanor if violating Bagley Keene was intentional  
(GC Sections 11130, 11130.3, 11130.5, 11130.7.)

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### Additional Resources

- A Handy Guide to the Bagley Keene Open Meeting Act 2004 (California Attorney General's Office)
- Guide to the Bagley Keene Open Meeting Act (Department of Consumer Affairs Legal Division)
- Open & Public IV: A Guide to the Ralph M. Brown Act (California League of Cities)

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# Navigating Financial Management Services (FMS)

Date: 10/24/16

Location: KRC

Presented by: Victor Lira

*Content provided courtesy of Community Interface Services*



[www.phs-west.com](http://www.phs-west.com)



Participants of the **Self-Determination Program (SDP)** are required to use a **Financial Management Service (FMS)** provider. Participants pay the FMS provider a fee from funds allocated through their individual budgets.



[www.phs-west.com](http://www.phs-west.com)



The FMS provider is an individual or entity vendored by Regional Center(s) with the responsibility to:

- Uphold the Self-Determination Principles of Freedom, Support, Authority, Responsibility and Confirmation
- Maintain separate accounting of funds for each participant
- Help participants to manage and direct funds in individual budgets
- Ensure participants have the financial resources to implement Individual Program Plans throughout the year and that payments are within amounts authorized in individual budgets



www.phs-west.com



The FMS provider supports participants with paying bills for goods and services or hiring employees.

There are three FMS models:

- Fiscal Agent
- Fiscal/Employer Agent (F/EA)
- Co-Employer

The types of supports offered by the FMS provider vary in each model. Participants select the model that best fits their individual needs and wants as well as their plans for using the funds in their individual budgets. FMS providers may offer one, two or all three of the FMS models.



www.phs-west.com



Depending on the model, the FMS provider:

- Receives, tracks and disburses funds based on the participants' approved plans and individual budgets
- Processes payroll, withholds taxes
- Ensures compliance with laws
- Assists in verifying provider qualifications
- Prepares and distributes monthly individual budget statements/expenditure reports
- Maintains source documentation *time sheets*



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A Self Determination Program (SDP) participant needs a Financial Management Service (FMS) provider

Does the participant plan to hire employees?

NO

**Fiscal Agent Model:**  
FMS is bill payer/check writer

YES

Does the participant want to be the ONLY employer, have authority to hire and fire, assume all employer liability, secure Federal and State Employer Identification Numbers (EIN), acquire required insurance (Workers' Compensation, Unemployment, Liability, etc.)?



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**YES**

## Fiscal/Employer Agent (F/EA) Model

490

- Participant has employer responsibility, participant is Employer of Record and the managing employer, while FMS provider assists participant with specific employment tasks and processes payroll/withholds taxes
- Participant has authority to hire and fire within SDP protocols and labor laws, FMS provider supports participant with understanding relevant protocols/laws
- Participant has primary employer liability, FMS provider operates in accordance with Internal Revenue Code Section 3504
- Participant has their own Federal and State Employer Identification Numbers (EIN)
- Participant acquires required insurance and typically pays out of individual budget, FMS provider verifies insurance
- Participant's employees may be exempt from certain tax requirements, FMS provider assists participants with those determinations



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**NO**

## Co-Employer Model

491

- Participant shares employer responsibility with the FMS provider, FMS provider is the Employer of Record, participant is the managing employer.
- Participant has authority to hire and fire within SDP protocols, labor laws, and FMS provider criteria
- FMS provider has primary employer liability
- FMS provider has Federal and State Employer Identification Numbers (EIN)
- FMS provider maintains required insurance, participant pays for insurance costs out of individual budget
- Participant's budget may need to cover employee Medical Insurance costs



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Q&A



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[www.phs-west.com](http://www.phs-west.com)



### Who is Acumen Fiscal Agent

- Established 1995 – supporting individuals to direct their own care
- Operate under applicable IRS procedure codes to perform Financial Management Services (FMS) duties
- Recognized as a national leader in FMS
  - Currently serve 14 states, 45 programs
  - Corporate office in Mesa, AZ
  - Remote offices in CA, GA, LA, MT & UT

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### Self-Directed Services – What is it?

- Different type of service delivery model
- Allows the person receiving services or their representative to hire their own support staff and pay them through a fiscal agent
- Gives the person/representative control over
  - Who will do the service
  - Where the service will take place
  - When the service will take place – flexibility to use when needed
  - How the service will take place
  - How much the employee will be paid (within guidelines)
- With control comes responsibility

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### Employer Responsibilities

- Follow relevant laws and rules on employment
- Liable for DOL compliance, OSHA requirements, job-related injury, mistreatment, abuse, discrimination, harassment, etc. of their employees - like any other employer.
- Typically have no functional relationship with the IRS because FMS will represent them in all aspects



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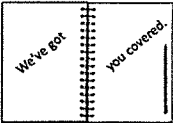
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### Employer Responsibilities

- Recruit, hire, train, schedule, set rate of pay, fire
- Complete and submit enrollment paperwork on themselves and their employees
- Submit pay requests to FMS
- Manage service budget
- Ensure services are being received
- Follow relevant laws and rules on employment



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### What is a Fiscal Agent?

- CMS requires a Fiscal Agent in all self-directed programs
  - IRS designation
  - Legitimate employer representative
  - Responsible for correct calculation, reporting and paying of payroll taxes
  - Acts as intermediary between funding source and family
  - Acts as intermediary between taxing authorities and family
  - Responsible for fiscal accountability of the program



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### FMS Role

- Process enrollment information, monitoring for correctness and completeness
- Conduct criminal background checks, if applicable
- Track certifications and qualifications, if applicable
- Provide and track training requirements, if applicable
- Process payments according to the individual budget
- Withhold, report and pay all employment taxes, including providing W-2s and 1099s at year end
- Arrange for Workers' Comp
- Provide reports to employer and stakeholders about prior authorization usage
- Answer questions about enrollment and payroll

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### What is **NOT** the FMS's Role?

- Determine eligibility or ineligibility for the program
- Determine if someone is right for self-directed services
- Determine what services or the amount of money or units a participant qualifies for
- Hire, fire, train or schedule employees
- Emergency back up plan

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### Why Acumen?

- Acumen has been in the FMS business for over 20 years
- Our staff is made up of people with social services backgrounds as well as accounting types
- We bring a wealth of experience and knowledge in working with many different types of states and programs
- We offer several electronic options, including time submission, reporting, and receipt of pay stubs
- Training on employer responsibilities is available
- We have helpful, courteous staff

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*Thank you!*

Acumen Fiscal Agent  
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