

DOCKETED

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Bagley-Keene Open Meeting Act Procedures, Ex Parté Rules, and Conflicts of Interest Provisions

DACAG Legal Support Team
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Bagley-Keene Open Meeting Act Procedures

Hank Crook



Bagley-Keene Open Meeting Act

California Public Policy to Conduct People's Business Openly

The purpose of the Bagley-Keene Open Meeting Act (Bagley-Keene) is to ensure that public agencies conduct the people's business openly so that the public may observe and be informed.

Bagley-Keene places a higher value on transparency than efficiency and this drives many of its rules.



Bagley-Keene

Under Government Code § 11121, Bagley-Keene applies to any “state body”

- **Bagley-Keene generally defines state bodies as all mandated state boards, commissions, and similar multimember groups as well as committees of these groups that have been delegated authority to make decisions and advisory committees of more than two members.**
- This includes the DACAG and can include its sub-groups.



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What is a meeting?

- A majority of members hear, discuss, or deliberate on topics relevant to the group's jurisdiction; and
- A majority of members are virtually or physically present, or
- A majority of members are indirectly communicating electronically or through intermediaries.

Not meetings: certain gatherings (e.g., conferences, open and noticed meetings of other state or legislative body or local agencies, social events) so long as a majority of members do not discuss DACAG business



Bagley-Keene

Meetings: A meeting occurs whenever a majority or quorum of group members are physically or virtually present to hear, discuss, or deliberate on a topic related to its jurisdiction.

CAUTION!!!

- A meeting can take place when a majority of members ***discuss, deliberate, or take action*** using direct (e.g., speaking in person) or indirect (e.g., email, speaking through intermediaries) communication.
- **Serial meetings are prohibited.** A serial meeting occurs when a majority of the members use a series of communications of any kind outside of a noticed meeting on any item of business within the jurisdiction of the body.
- **Majority attendance at social events** requires that members **avoid discussing topics** related to their group's **area of authority**.



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Notice Requirements

- Must provide meeting notices and agendas to the public before it meets
- Notice must be published on the Internet at **least ten days** prior to the meeting with contact and location information
- Agendas must describe items to be discussed, and, once made available, *cannot be changed without formal action and mandated notice*
- Written materials (e.g., presentations to the DACAG) must be made available to the public for inspection at the meeting



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Notice Requirements

- Smaller meetings of DACAG members must also follow notice and open meeting requirements, if:
 - They consist of a **majority of members**
 - They consist of **three or more members and have been created by the DACAG and/or its chair** to advise the DACAG
 - They consist of **two or more members and have been empowered to exercise authority** on behalf of the DACAG



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Exceptions from the 10-day notice requirement

- Special Meetings
 - When immediate action must be taken (e.g., to discuss proposed legislation)
 - At the commencement of the special meeting, the state body must make a finding that 10-day notice would impose a substantial hardship on the body or that immediate action is required to protect the public interest and must provide a factual basis for the finding.
 - Notice be provided at least 48 hours before the meeting to the members of the body and all national wire services, along with posting on the Internet



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Exceptions from the 10-day notice requirement

- Emergency Meetings
 - Rare instances when there exists a crippling disaster or a work stoppage that would severely impair public health and safety
 - Requires majority vote that an emergency situation exists
 - Must provide notice to media requestors at least one hour prior to the meeting
 - Records and information on any action at the meeting must be posted ASAP after the meeting



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Public Participation

- Bagley-Keene allows the general public to monitor and participate in meetings of state bodies.
- The site (physical or virtual) must be accessible to disabled individuals.
- The state body is prohibited from imposing any conditions on attendance at a meeting.
 - e.g., must be clear that sign-in sheets are voluntary and not a pre-requisite for either attending or speaking at the meeting



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Public Participation

- The public is entitled to record and broadcast (audio and/or video) the meetings, unless it causes persistent disruption.
- State body must provide reasonable time for members of the public to speak about each agenda item before or during discussion but can make reasonable limitations.
- Current law allowing for 100% virtual meetings sunsets on July 1, 2023.



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Public Comments

- A state body cannot act on a matter raised by a member of the public unless the matter is on the agenda for that meeting.
- Same day additions to the agenda are not allowable because even under the limited opportunities for agenda adds after the 10-day notice, the press still needs a 48-hour notice.



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Options for Responding to Public Comments

- DACAG cannot take action on a public comment if the topic was not included as an agenda item.
- The DACAG, or its members, may respond to the public comment but has no obligation to respond or answer questions.
- The Chair of the DACAG can consider whether to agendize the topic for a future meeting.



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Options for Responding to Public Comments (continued)

- A DACAG member can volunteer to review the issue and report back at the next meeting.
- Individual DACAG members, in their individual capacity, can address public comments outside of a DACAG meeting, so long as they do not create any conflict of interest with their DACAG role.



Ex Parté Rules

Vanessa Baldwin



Ex Parté

"Ex parte communication" means a **written communication** (including a communication by letter or electronic medium) or **oral communication** (including a communication by telephone or in person) that:

(1) concerns any issue in a **formal proceeding**, other than **procedural matters**,

(2) takes place between an **interested person** and a **decisionmaker**, regardless of which direction, and

(3) does **not** occur in a public hearing, workshop, or other public forum that has been noticed to the official service list or on the record of the proceeding (different from the daily calendar).



Ex Parté

- **DACAG/CPUC Proceeding Considerations**
 - Noticed DACAG agenda
 - Create a safe harbor - email proceeding service lists a copy of the agenda so parties are on notice of what the meeting might involve.
 - Sending comments to CPUC
 - Verbal comments at a Commission meeting OK
 - Written comments
 - DACAG will send to CPUC staff. CPUC staff sends to Commissioners, advisors, proceeding service list.
 - Be mindful of which “hat” you are wearing
 - DACAG hat – You are not a party or interested person in a CPUC proceeding.
 - During your day job, your participation in CPUC proceedings could trigger ex parte rules.
 - Ex Parte rules also apply to CEC siting and compliance proceedings convened under the Administrative Procedure Act (APA)



Conflicts of Interest Provisions

Hank Crook



Conflicts of Interest

DACAG Charter, § 4.2 Conflict of Interest Policy

Conflict of Interest Policy. Although committee members are not considered to be public officials under the Political Reform Act, to identify potential conflicts of interest and any appearance of impropriety committee members shall complete a Statement of Economic Interests (Form 700) prior to taking a seat on the Advisory Group, annually, and upon the conclusion of the member's term.



Conflicts of Interest

DACAG Charter § 4.2 (continued)

Each member shall disclose on his or her Form 700 each economic interest, as defined, in any entity seeking to provide any product or service related to the Advisory Group's function, or that has plans to come before the Advisory Group or either the CPUC or the Energy Commission to seek funds from the monies under the control of either Commission, or in a parent or subsidiary of such an entity. Each Advisory Group member will maintain his or her own Form 700, and the CPUC and the Energy Commission will also maintain a copy of the Form 700s for all members.



Conflicts of Interest

DACAG Charter § 4.2 (continued)

The Form 700 for any member will be provided to any person upon request within a reasonable period. In addition, Advisory Group members may from time to time encounter a situation that presents a potential conflict of interest for the Advisory Group member. In such situations, the Advisory Group or any member should consult with a legal liaison to the Advisory Group to obtain advice on how to proceed.



Conflicts of Interest

Political Reform Act

Government Code § 87100

A public official at any level of state or local government shall not make, participate in making, or in any way attempt to use the public official's official position to influence a governmental decision in which the official knows or has reason to know the official has a financial interest.



Conflicts of Interest

Political Reform Act

Government Code § 87104

(a) **A public official of a state agency shall not, for compensation, act as an agent or attorney for, or otherwise represent, any other person** by making any formal or informal appearance before, or any oral or written communication to, the official's state agency or any officer or employee thereof, if the appearance or communication is for the purpose of influencing a decision on a contract, grant, loan, license, permit, or other entitlement for use.

(b) For purposes of this section, **“public official” includes a member . . . of an advisory body to a state agency**, whether the advisory body is created by statute or otherwise, except when the public official is representing the official's employing state, local, or federal agency in an appearance before, or communication to, the advisory body.



Conflicts of Interest

Government Code § 1090

(a) . . . [S]tate . . . officers or employees shall not be financially interested in any contract made by them in their official capacity, or by any body or board of which they are members.



Questions?

Please reach out to the DACAG's Legal Support Team if you have any questions.

Legal Support Team

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