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# **Bagley-Keene Open Meeting Act Updates, Ex Parte Rules, and Conflicts-of-Interest Provisions**

DACAG Legal Support Team  
December 1, 2023



# Bagley-Keene Open Meeting Act Updates

Reneé Webster-Hawkins  
Senior Attorney  
Chief Counsel's Office  
California Energy Commission



# Purpose of the Bagley-Keene Open Meeting Act

- The Legislation: “Public agencies exist to aid in the conduct of the people’s business.... The proceedings of public agencies [must] be conducted openly so that the public may remain informed.”
- “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.”
- **State bodies** subject to Bagley-Keene include the DACAG and any subcommittees of 3 or more:
  - 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.
  - A board, commission, committee, or similar multimember body that **exercises any authority** of a state body delegated to it by that state body.
  - An advisory board, advisory commission, advisory committee, advisory subcommittee, or similar multimember advisory body of a state body, if created by formal action of the state body or of any member of the state body, and if the advisory body so created consists of three or more persons.
- Authority can be advisory-only.



# How Bagley-Keene works, generally



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**Requires prior public notice of and public access to state body meetings and limits how and when members of a state body may communicate outside of a noticed public meeting**

## What is a meeting?

- **Congregational Meeting: Permitted!**
  - When a majority or quorum are all together
  - At the same time and place (physical or virtual)
  - To hear, discuss, or deliberate upon
  - Any item that is within the subject matter jurisdiction of the state body to which it pertains.
  - *Note: same analysis applies to subbodies subject to Bagley-Keene*
- **Serial Meeting: Prohibited!**
  - Bagley-Keene expressly prohibits the use of
    - direct communication,
    - personal intermediaries, or
    - technological devices
  - that are employed by a majority of the members of the state body to develop
  - a collective concurrence
  - as to action to be taken on an item by the members of the state body
  - outside of a noticed, open meeting.

**Not meetings:** Certain gatherings (e.g., conferences, open and noticed meetings of other state or legislative body or local agencies, social events)



# General Requirements: What is necessary when a meeting happens?



## Notice & Agenda

- Must provide meeting notices and agendas to the public 10 calendar days before the state body meets
- Agendas must describe each item of business the state body will consider at the meeting.
  - Each agenda item generally need not exceed 20 words, but it must give the average person enough information to decide whether to attend or participate in the meeting.
  - The public should not have to be “clairvoyant or have had collateral information” to understand a state body’s intended action.
  - A state body may not deliberate or act upon on any item not described, or inadequately described, on the agenda.

## Public Access & Participation

- The public must be provided access to written records prepared by the state body or member of a state body for the members’ consideration prior to or during the meeting.
- The public shall have an opportunity to directly address the state body on each item before or during the discussion or consideration of the item.



# Bagley-Keene Public Participation



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## Public Participation

- Allows the general public to monitor and participate in meetings of state bodies.
- The site (physical or virtual) must be accessible to people with disabilities.
- The state body is prohibited from imposing any conditions on attendance at a meeting.
  - Sign-in sheets are voluntary and not a pre-requisite for attending or commenting at the meeting.
- The public is entitled to record and broadcast (audio and/or video) the meeting, unless it causes persistent disruption.



# Bagley-Keene Response to Public Comment



- DACAG as a body cannot take action or state a position on a public comment if the topic was not included as a noticed agenda item
- The DACAG members may individually respond to any public comment but there is no obligation to respond or answer questions.
- The Chair of the DACAG can consider whether to agendize the topic for a future meeting.
- The Chair of the DACAG may place reasonable content-neutral rules or regulations on the time allotted to members of the public to speak.
  - Rules may not prohibit public criticism of the policies, programs, or services of the DACAG, CEC or CPUC, or of the acts or omissions of those state bodies.
  - State bodies cannot restrict speech based on viewpoint. Only if it is a persistent disruption.





# SB 544 Remote Meeting Changes



## January 1, 2024-December 31, 2025

- For non-advisory state bodies: If a quorum is physically present at noticed location, additional members may appear remotely (remote location not noticed).
- For advisory bodies: all participants may attend remotely but at least one staff person must be present at a noticed physical location.
- For both of the above, attendees must appear on camera and any individual present at the remote location 18 years of age or older must be disclosed

## January 1, 2026 - Future

- Rules for non-advisory state bodies revert to pre-Covid. The physical location for any member appearing virtually must be included in the 10-day notice.
- Rules for advisory bodies allow for remote attendance as long as a quorum of physically-present members at one location is obtained. All remote attendees must be disclosed at least 24 hours before the meeting.



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# Conflicts-of-Interest Provisions

Vanessa Baldwin  
Senior Attorney  
California Public Utilities Commission



# Conflicts-of-Interest



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## **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



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## **DACAG Charter § 4.2 (continued)**

Each member shall disclose on their 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



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## 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



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## 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



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## Government Code § 1090

[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. (Government Code section 1090(a).)



# Questions?



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

## Legal Support Team

- Renee Webster-Hawkins ([Renee.Webster-Hawkins@energy.ca.gov](mailto:Renee.Webster-Hawkins@energy.ca.gov))
- Lisa DeCarlo ([Lisa.DeCarlo@energy.ca.gov](mailto:Lisa.DeCarlo@energy.ca.gov))
- Vanessa Baldwin ([Vanessa.Baldwin@cpuc.ca.gov](mailto:Vanessa.Baldwin@cpuc.ca.gov))