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Bagley-Keene Open Meeting Act, Ex Parte, and Conflicts-of-Interest Rules

DACAG Legal Support Team
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Bagley-Keene Open Meeting Act

Bagley-Keene Open Meeting Act: Purpose

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

The Act protects the public's opportunity to observe, but also to participate in, the decision-making process of state bodies.

What does Bagley-Keene apply to?

- **State bodies** subject to Bagley-Keene include the DACAG and any subcommittees of 3 or more:
 - A state body created by statute or required by law to conduct official meetings
 - 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 body composed of 3 or more members, if created by formal action of a state body.
- Authority can be advisory-only

What is a Bagley-Keene 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!**
 - 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.

How to make a Meeting Bagley-Keene Compliant?

- **Notice & Agenda**

- Provide to the public 10 calendar days before the meeting
- Time/date/place of meeting
- Must describe each item of business the state body will consider at 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**

- 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

- The Act allows the ***general public to monitor and participate*** in meetings of state bodies.
- The site (physical or virtual) must be ***accessible*** to the disabled.
- 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 meetings, unless it causes persistent disruption.

Bagley-Keene: Response to Public Comments

- 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.

Remote Meeting Rules for Advisory Bodies until January 1, 2026

- Advisory body members may attend remotely if announced in the notice, but at least one agency staff person must be present at a noticed physical location.
- All members must appear on camera. If a member cannot appear on camera due to challenges with internet connectivity, the member shall announce the reason for their nonappearance.

Ex Parte Rules

Ex Parte

- Ex parte communications are governed by Article 8 of the CPUC's Rules of Practice and Procedure
- "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**, 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.

Ex Parte

- **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.

Conflicts-of-Interest Provisions

Conflicts-of-Interest: DACAG Charter

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

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

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 § 87104

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: Section 1090

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."

Conflicts-of-Interest: Recommended Guidance

For members whose employers have a **current funding agreement** with the CPUC or CEC or **plan to submit an application** for funding or a permit or license with one of the two agencies, **it is recommended:**

- **DACAG member provide a disclosure** from the dais **prior to a related discussion** to make the economic relationship with a potential beneficiary of the agency decision more transparent.
 - Example: *"My employer Equitable Energy, LLC is applying for a grant from the CEC under Solicitation CTP-2024-00X to install electric vehicle chargers in rural counties in the Central Valley. My comments on this topic will be limited to broad policy statements, and are not intended to influence the CEC decisions on the scoring or specific funding decisions under this solicitation."*
- **DACAG member not appear as a signatory or key participant** under a current funding agreement or pending application for funding or for a permit or license.

Similarly, for any member who is personally **active in a pending proceeding**, or whose employer is a party to a proceeding, **it is recommended that the DACAG member provide a disclosure** from the dais prior to a related discussion.

Depending on the circumstance, **recusal from a discussion may be warranted**. Please consult with the DACAG Legal Liaisons on a case-by-case basis.

Legal Resources

Bagley-Keene Open Meeting Act

- CA Office of the Attorney General - <https://oag.ca.gov/open-meetings>

Fair Political Practices Commission

- Overview of Section 1090 – <https://www.fppc.ca.gov/learn/section-1090.html>

Office of Attorney General

- Conflicts of interest guide - <https://oag.ca.gov/sites/all/files/agweb/pdfs/publications/coi.pdf>

Legal Liaisons

- Reneé Webster-Hawkins (Renee.Webster-Hawkins@energy.ca.gov)
- Vanessa Baldwin (Vanessa.Baldwin@cpuc.ca.gov)

When in doubt, just ask!