



Edmund G. Brown Jr.
Governor

Matthew Rodriguez
Secretary for Environmental Protection

MEMORANDUM

TO: Members of the Independent Emissions Market Advisory Committee

FROM: Christiana Tiedemann
Deputy Secretary for Law Enforcement and Counsel
California Environmental Protection Agency

DATE: June 20, 2018

SUBJECT: BAGLEY-KEENE OPEN MEETING ACT

This memo provides information about the Bagley-Keene Open Meeting Act (the “Bagley-Keene Act”) to members of the Independent Emissions Market Advisory Committee (the “Committee”).

The Bagley-Keene Act, set forth in California Government Code sections 11120-11132, is a state law that requires multi-member state bodies established by statute to conduct their business in public, except for very limited circumstances where closed session meetings are authorized.¹ The Bagley-Keene Act reflects a basic value judgment by the Legislature that members of the public should have an opportunity to monitor and participate in the meetings of multi-member state bodies.

The Bagley-Keene Act requires that all meetings of the Committee be open to the public, with advance notice of the meeting provided to the public, including an agenda of the items that will be discussed at the meeting. The Act defines a “meeting” to include “any congregation of a majority of the members of a state body at the same time and place to hear, discuss or deliberate upon any item that is within the subject matter jurisdiction of the state body to which it pertains.” (Govt. Code, § 11122.5, subd. (a).) A meeting occurs when a majority (more than half) of the current membership of the Committee meets in one physical place or by teleconference, or by a combination of both. Because the Committee has five members, a majority of the Committee is three members. Congregations of three or more members of the Committee at the same time and place, or by teleconference, to hear, discuss or deliberate upon any item within the subject matter of the Committee are prohibited by the Act.

¹ The Bagley-Keene Act provisions that authorize closed session meetings are limited to personnel matters and discussion of pending litigation. We do not expect that they will apply to any Committee matters.

The Act also prohibits “serial meetings” that do not involve the congregation of a majority of members at the same time and place. The Act provides that a “majority of the members of a state body shall not, outside of a meeting authorized by this chapter, use a series of communications of any kind directly or through intermediaries to discuss, deliberate, or take action on any item of business that is within the subject matter of the state body.” (Govt. Code, § 11122.5, subd. (b)(1).) An example of a prohibited serial meeting is a series of separate phone calls by one member of the Committee to at least two other members to discuss or deliberate about a particular issue that is within the subject matter of the Committee. The member initiating the separate calls would serve as the “hub of the wheel” by communicating with the other two members (“spokes of the wheel”), and a serial meeting will have occurred, even though a majority of the members have not been present at the same place and no more than two members have participated in conversations about the matter at the same time.

A serial meeting can also occur through the exchange of emails between a majority of the members of the Committee, including through the forwarding of two-party emails to another member of the Committee. Committee members should be careful when communicating by email with other Committee members about the subject matter of the Committee in order to avoid a prohibited serial meeting.

Other provisions of the Bagley-Keene Act that Committee members should be aware of include:

- The public notice of Committee meetings, which must be made available to the public at least 10 days before a meeting, must identify the location of the meeting and the location of any member participating in the meeting by teleconference.
- The Committee must allow members of the public to attend meetings and provide members of the public with an opportunity to address the Committee on each agenda item. If a member of the Committee participates in a meeting by teleconference, the member’s location during the teleconference must be accessible to the public and there must be an opportunity for members of the public at that location to address the Committee.
- Matters discussed at Committee meetings are restricted to those listed on the meeting agenda. If new topics for discussion arise after publication of a meeting agenda, including at a meeting, they must be added to the agenda for a future meeting.

The Bagley-Keene Act is more extensive than the provisions discussed above. A copy of the entire Bagley-Keene Act is attached to this memo. In addition, CalEPA legal staff is available to provide advice on the Act’s requirements as they pertain to the Committee’s work.