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TO: Members of the Lithium-Ion Car Battery Recycling Advisory Group

FROM: Salwa K. Bojack, Staff Attorney
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DATE: November 18, 2019

SUBJECT: Bagley-Keene Open Meeting Act Requirements

This memo provides information about the requirements of the Bagley-Keene Open Meeting Act (the Bagley-Keene Act) to members of the Lithium-Ion Car Battery Recycling Advisory Group (Advisory Group).

The Bagley-Keene Act, set forth in California Government Code sections 11120-11132, is a state law that requires multi-member state bodies that are established by statute to conduct their business in public, except for very limited circumstances where closed session meetings are authorized. The Bagley-Keene Act provisions that authorize closed session meetings are very limited, including personnel matters and discussion of pending litigation. It is not likely that closed session provisions will apply to any Advisory Group matters. The Bagley-Keene Act reflects a basic value judgment by the Legislature that members of the public should have an opportunity to attend and participate in the meetings of multi-member state bodies.

General Requirements

The Bagley-Keene Act requires that all meetings of the Advisory Group be open to the public, with advance public notice of each meeting and an agenda of the items that will be discussed at the meeting. The Bagley-Keene 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 noticed meeting normally occurs when a majority (more than half) of the current membership of the Advisory Group, known as a quorum, meets in one physical place or by teleconference, or by a combination of both. However, members must be cautious about communications outside of noticed meetings because unintended meetings can also occur through non-traditional forums, such as on social media.

The Advisory Group has eighteen (18) members, so a majority is ten (10) members. Therefore, a congregation of ten (10) or more members at the same time and place, or by teleconference, to hear, discuss or deliberate upon any item within the subject matter jurisdiction of the Advisory Group would be a “meeting” subject to the requirements of the Bagley-Keene Act.

Public Notice

Public notice of meetings is required at least 10 days before a meeting. (Gov. Code, § 11125.) The notice must identify the location of the meeting and the location of any member participating in the meeting by teleconference. Matters discussed at Advisory Group 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.

Attending Meetings by Teleconference

The Bagley-Keene Act also provides for audio or audio and visual teleconference meetings for the benefit of the public and the body. (Gov. Code, § 11123.) However, certain requirements must be met. For example, the Advisory Group must allow members of the public to attend meetings. Therefore, if a member of the Advisory Group participates in a meeting by teleconference, the member’s teleconference location must be publicly noticed on the agenda and accessible to the public, including to persons with disabilities. Also, at least one member of the state body must be physically present at the location specified in the notice of the meeting. (Gov. Code, §§ 11123, 11123.1, 11131.)

Attending Meetings Remotely

Members of advisory bodies are also authorized to attend a meeting “remotely” without publicly disclosing their physical location or posting the agenda at their location. The physical location also need not be accessible. However, to do so, certain other requirements must be met. For example, the regular 10-day notice and agenda must identify a “primary physical meeting location” where a quorum of the membership will be physically present and where members of the public may physically attend and participate. Notice must also be given at least 24-hours before the meeting that identifies members participating remotely and how members of the public may listen or observe the meeting remotely. All decisions must be taken by roll call vote, and members who meet remotely must be listed in the minutes of the meeting. (Gov. Code, § 11123.5.)

Serial Meetings

The Bagley-Keene Act prohibits “serial meetings” that do not involve the congregation of a majority of the members at the same time and place, but that nonetheless result in a majority of members communicating about the same matter. The Bagley-Keene Act states 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 would be a series of separate phone calls by one member of the Advisory Group to at least nine (9) other members to discuss or deliberate about a particular issue that is under consideration by the Advisory Group. The member initiating the separate calls or emails would serve as the “hub of the wheel” by communicating with the other nine (9) members (“spokes of the wheel”). A serial meeting would have occurred, even though a majority of the members would not have been present at the same place and no more than two members would have participated in conversations about the matter at the same time.

A serial meeting can also occur through the exchange of emails by a majority of the members of the Advisory Group, including through forwarding two-party emails to other Advisory Group members. Advisory Group members should be careful when communicating by email with other members about subjects falling within the Advisory Group’s jurisdiction to avoid a prohibited serial meeting.

Exceptions

The Legislature has recognized that not all gatherings of a majority of members of a state body at a single location constitute a meeting. (Gov. Code, § 11122.5, subd. (c).) The Bagley-Keene Act provides that its provisions do not apply to the following situations, provided that a majority of members of the state body do not discuss among themselves business that is within the subject matter jurisdiction of the body:

- Attendance by a majority of members at a conference or similar gathering open to the public that involves discussion of issues of general interest to the public or to public agencies of the type represented by the state body;
- Attendance by a majority of members at an open and noticed meeting of another state body or of a legislative body of a local agency;
- Attendance by a majority of members at a purely social or ceremonial occasion; and

- Attendance of a majority of members at an open and publicized meeting organized to address a topic of state concern by a person or organization other than the state body.

Further Resources

The Bagley-Keene Act is more extensive than the provisions discussed above and additional resources can be found at the following web addresses:

- [Bagley-Keene Open Meeting Act](http://leginfo.legislature.ca.gov/faces/codes_displayText.xhtml?lawCode=GOV&division=3.&title=2.&part=1.&chapter=1.&article=9)
[http://leginfo.legislature.ca.gov/faces/codes_displayText.xhtml?lawCode=GOV
&division=3.&title=2.&part=1.&chapter=1.&article=9](http://leginfo.legislature.ca.gov/faces/codes_displayText.xhtml?lawCode=GOV&division=3.&title=2.&part=1.&chapter=1.&article=9)
- [A Handy Guide to The Bagley-Keene Open Meeting Act of 2004 \(2018 Update\) by the California Attorney General's Office](https://www.sco.ca.gov/Files-ARD/BudLeg/Bagley-Keene%20Open%20Meeting%20Act%20Requirements.pdf)
<https://www.sco.ca.gov/Files-ARD/BudLeg/Bagley-Keene%20Open%20Meeting%20Act%20Requirements.pdf>

CalEPA legal staff are available to provide advice as needed. Please feel free to contact me at salwa.bojack@calepa.ca.gov or (916) 322-7188 if you have any questions.