

Independent Emissions Market Advisory Committee

Committee Handbook

[November 2020 draft]

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1. Introduction

This handbook documents the policies and procedures used by the Independent Emissions Market Advisory Committee (known as the IEMAC and referred to as “the Committee” here). It also catalogs relevant laws that apply to the Committee’s scope and activities, including the Committee’s relationship with the California Environmental Protection Agency (CalEPA), the California Air Resources Board (CARB), and the Joint Legislative Committee on Climate Change Policies (JLCCCP). Finally, it describes the mechanisms by which interested members of the public can engage with Committee members and the Committee’s work.

2. Legal authorities and responsibilities

2.1. Core legal authority

The Committee was created as part of legislation called AB 398 (Stats. 2017, Ch. 135) that extended California’s cap-and-trade program through 2030 and codified the creation of the Committee in Section 38591.2 of the Health and Safety Code.

2.1.1. Membership

The Committee consists of five voting members and a sixth non-voting member from the Legislative Analyst’s Office. Of the five voting members, three are appointed by the Governor, one is appointed by the Speaker of the Assembly, and one is appointed by the Senate Rules Committee.

The current membership is as follows:

Member	Home institution	Appointing authority
Dr. Dallas Burtraw	Resources for the Future	Governor
Prof. Meredith Fowlie	UC Berkeley	Governor
Ms. Jennifer Kropke	International Brotherhood of Electrical Workers (IBEW) / National Electrical Contractors Association (NECA)	Governor
Prof. Ann Carlson	UCLA Law School	Assembly
Dr. Danny Cullenward	Stanford Law School	Senate
Dr. Ross Brown	Legislative Analyst’s Office	Legislative Analyst’s Office

2.1.2. Statutory authority

The Committee’s core legal authority is found Section 38951.2 of the Health and Safety Code:

The committee, at least annually, shall hold a public meeting and report to both the state board and the Joint Legislative Committee on Climate Change Policies on the environmental and economic performance of the regulation adopted by the state board pursuant to subdivision (c) of Section 38562 and other relevant climate policies.

For context, this provision refers to the CARB as the “state board” and CARB’s cap-and-trade program for greenhouse gases as the “regulation adopted by the state board pursuant to subdivision (c) of Section 38562” of the Health and Safety Code.

2.1.3. Annual report

The Committee’s primary legal obligation is to produce an annual report that is transmitted to the CARB and the JLCCCP. The Committee published its first report in 2018.

CARB is also required to report to the Legislature, in consultation with the Committee, if two consecutive quarterly auction-clearing prices exceed the lower of the two price containment levels established by the AB 398 implementing regulations.¹ CARB set the lower of the two price containment levels at \$41.50 per allowance, beginning in 2021 and rising at five percent plus inflation per year thereafter.² No auction has yet cleared at or above this level.

2.2. Other legal responsibilities

2.2.1. Open meeting rules (Bagley-Keene)

The Committee is generally subject to California’s open public meeting rules, which are commonly known as the Bagley-Keene Act.³ The California Department of Justice provides a guide that explains the general requirements of these provisions.⁴

One of the critical requirements of the Bagley-Keene Act is a prohibition on communications that occur outside of public meetings and involve a majority of Committee members. CalEPA has advised the Committee that three Committee members constitutes a majority for the purposes of the Bagley-Keene Act, and therefore that a communication between three Committee members regarding subject matters within the jurisdiction of the Committee would constitute a prohibited communication if it occurs outside of a properly noticed public meeting. In contrast, a communication between two Committee members does not raise these concerns, nor do communications between individual Committee members and state government employees or officials.

¹ Health & Safety Code § 38562(c)(2)(J).

² California Code of Regulations, title 17, §§ 95913(h)(5)-(6).

³ Government Code §§ 11120–11132.

⁴ California Department of Justice, <https://oag.ca.gov/open-meetings>.

Although the Committee is generally subject to the Bagley-Keene rules, SB 85 (Stats. 2019, Ch. 31) exempted the Committee from subdivision (b) of Section 11122.5 of the Government Code, which prohibits what are called “serial meetings.”⁵ A serial meeting could involve, for example, Committee members A and B discussing a topic, which Committee members B and C then separately discuss. In this example, a three-member “serial meeting” has occurred between Committee members A, B, and C, even if the two conversations occur at separate times and places.

As a result of the Committee’s statutory exemption from the general prohibition on serial meetings, CalEPA has advised the Committee that Committee members can engage in unlimited bilateral communications, so long as no single communication involves three Committee members.

2.2.2. Conflicts of interest

Section 38591.2(b)(2)(B) of the Health and Safety Code requires that members “lack financial conflicts of interest with entities subject to the [cap-and-trade program] regulation.”

The Committee has not adopted a formal policy for implementing this requirement.

2.2.3. Public Records Act

CalEPA has advised the Committee that its activities may be subject to the Public Records Act.

2.2.4. FPPC Form 700 reporting

The Political Reform Act requires various reporting obligations from people holding public office, including an annual Statement of Economic Interest (known as Form 700).

In a November 20, 2018 letter to the Fair Political Practices Commission (FPPC), CalEPA requested an exemption for the Committee from these reporting obligations. On December 12, 2018, the FPPC granted CalEPA’s request, exempting the Committee from the obligation to adopt a formal conflict of interest policy and exempting all Committee members from filing a Form 700 each year. This exemption remains in effect until the basis for FPPC’s determination no longer exists or the end of two years, whichever is shorter.⁶

⁵ Health & Safety Code § 38591.2(d).

⁶ Fair Political Practices Commission, http://www.fppc.ca.gov/content/dam/fppc/NS-Documents/LegalDiv/Exemptions_and_Extensions_18751/Exemptions/E-18-005.pdf.

2.2.5. Public notice for meetings

CalEPA will announce official public notice for Committee meetings at least 10 business days prior to those meetings, consistent with the requirements of the Bagley-Keene Act. Meeting notices will include a brief description of the upcoming meeting's agenda.

2.2.6. ADA accessibility

Committee meetings are open to the public, with CalEPA ensuring accessibility under the Americans with Disability Act (ADA). Committee members should prepare documents and other meeting materials in formats that are ADA accessible, including making digital written documents accessible to text-to-speech software for the visually impaired.

3. Internal committee policies

3.1. Governance

3.1.1. Chair

The Committee elects a Chair from among its members. The Chair is responsible for acting as a liaison between the Committee and CalEPA and for running public Committee meetings.

The current Chair is Dr. Dallas Burtraw.

3.1.2. Vice Chair

The Committee elects a Vice Chair from among its members. The Vice Chair is responsible for the duties of the Chair when the Chair is unavailable.

The current Vice Chair is Professor Ann Carlson.

3.2. Committee reports

The Committee's core work centers around the production of an annual report that is transmitted both to CARB and the JLCCCP. The Committee is also required to hold at least one public meeting per year.

3.2.1. Committee scope

Section 38591.2 of the Health and Safety Code requires Committee reports to address "the environmental and economic performance of the regulation adopted by the state board pursuant to subdivision (c) of Section 38562 and other relevant climate policies."

Pursuant to legal advice from CalEPA, the Committee has interpreted its scope to include, but not be limited to, matters relating to CARB's cap-and-trade program for greenhouse gases. Each year in a public meeting, the Committee determines a scope of work for the upcoming annual report that is consistent with this interpretation. The Committee welcomes input from interested members of the public as well as state policymakers during this process.

3.2.2. Subcommittees

Pursuant to legal advice from CalEPA, the Committee develops ad hoc subcommittees each year to carry out work and discussion in between public Committee meetings. Each subcommittee is comprised of two Committee members and focuses on a topic selected by the full Committee for inclusion in that year's annual report. Because two Committee members can communicate with one another in between public Committee meetings under the Bagley-Keene Act rules, two-person subcommittees afford the Committee the opportunity to conduct its work throughout the year.

Subcommittees report their progress and interim work products to the Committee at public meetings. They do not speak for the Committee, although their work products can be approved by the full Committee in a public meeting for inclusion in annual Committee reports.

3.2.3. Annual report approval process

The Committee works to achieve consensus on the final text of annual reports. This approach has worked well to date and the Committee hopes to continue achieving consensus outcomes. Should consensus not be possible, however, a simple majority of voting members—that is, at least three voting Committee members—can approve a final Committee report for publication.

Committee reports should indicate the manner by which they were approved each year to provide clarity to policymakers and the interested public.

3.2.4. Individual member statements in annual reports

All Committee members can issue independent statements to be included in published Committee reports. This approach allows each member to express a more detailed or individualized perspective on issues where there is broad consensus, or the opportunity to distinguish that member's views from the rest of the Committee where consensus is not possible.

Individual member statements are not subject to the review or approval of the full Committee. They should therefore be designated in final published reports and publicly interpreted as representing the individual views of a Committee member, rather than the Committee as a whole.

3.3. General policies

3.3.1. Document distribution

CalEPA and all Committee members should distribute any documents that require the attention of the full Committee to all Committee members without any unreasonable delays.

Due to the Committee's exemption from the prohibition on serial meetings (see Section 2.2.1, above), individual Committee members can distribute documents to the full committee via separate emails to each individual Committee member. Committee members can also transmit public documents to CalEPA for public posting on the Committee website.

3.3.2. Non-voting members

The Committee's representative from the Legislative Analyst's Office participates on the Committee as a non-voting member. Statements from and reports by the Committee do not necessarily reflect the views of the Legislative Analyst's Office and should not be construed as representing the views of the Legislative Analyst's Office.

3.3.3. Disclaimers for outside work

Voting members of the Committee are encouraged to acknowledge their Committee positions when speaking or writing publicly but should include an appropriate disclaimer whenever there might be the potential for misunderstanding about the nature of their representations.

A disclaimer should clearly indicate that Committee members are speaking only for themselves and not for the Committee as a whole. For example:

[Committee member name] is a member of the CalEPA Independent Emissions Market Advisory Committee, but does not speak for the Committee here.

The only statements from the Committee as a whole are those that have been approved by the Committee, such as its annual reports.

4. Engagement with state government

4.1. California Environmental Protection Agency

The Committee is hosted by the California Environmental Protection Agency, which manages the administrative functions of the Committee's public meetings.

4.1.1. Staff and leadership contacts

The Deputy Secretary for Climate Policy is CalEPA’s designated official for working with the Committee. The current Deputy Secretary is Lauren Sanchez.

Various staff members at CalEPA also help support the Committee and share access to an email inbox at IEMAC@calepa.gov.

4.1.2. Staff support for meetings

In coordination with the Committee Chair, CalEPA staff prepare official public meeting notices, arrange for logistics for in-person or web-based public meetings, and ensure that Committee documents are posted to the IEMAC website in advance of Committee meetings.

4.1.3. Reimbursements

Committee members serve as volunteers and are not compensated for their time. However, CalEPA has agreed to reimburse Committee members for travel expenses incurred to attend Committee meetings.⁷

4.2. Joint Legislative Committee on Climate Change Policies

The Committee is required to submit its annual reports to the JLCCCP.

4.2.1. Committee leadership and staff

The Joint Legislative Committee on Climate Change Policies is currently led and staffed by:

- Assembly Member Christina Garcia, Chair
- Senator Henry Stern, Vice Chair
- Ms. Alana Matthews, Chief Consultant (Alana.Matthews@asm.ca.gov)

5. Public access and transparency

5.1. Website and email list serve

CalEPA maintains a website listing the Committee’s activities and publications. Notices about upcoming Committee meetings and meeting agendas are posted at the CalEPA website:

⁷ CalEPA, IEMAC Process Memo (June 2018), <https://calepa.ca.gov/wp-content/uploads/sites/6/2018/06/IEMAC-Process-Memo-June-2018.pdf>.

<https://calepa.ca.gov/climate/iemac-independent-emissions-market-advisory-committee/>

In addition to the website, CalEPA also maintains an email list serve to which announcements concerning Committee meetings, meeting agendas, and publications. Members of the public can subscribe to the email list by sending an email message requesting subscription to IEMAC@calepa.ca.gov.

5.2. Public comments

The Committee welcomes comments from interested members of the public through a variety of mechanisms and opportunities.

5.2.1. Contacting the committee

The email addresses for Committee members and for CalEPA staff working on Committee matters are:

Member / Agency	Email address
CalEPA	IEMAC@calepa.ca.gov
Dallas Burtraw (Chair)	burtraw@rff.org
Ann Carlson (Vice Chair)	carlson@law.ucla.edu
Ross Brown	Ross.Brown@lao.ca.gov
Danny Cullenward	dcullenward-iemac@ghgpolicy.org
Meredith Fowlie	fowlie@berkeley.edu
Jennifer Kropke	jkropke@ibew11.org

5.2.2. Written comments

The Committee invites written comments from interested members of the public on upcoming and recent Committee agenda items. Please send written comments to CalEPA (IEMAC@calepa.ca.gov) and copy each member of the Committee using the email addresses listed above in Section 5.2.1.

Please note that written comments will be treated as public documents. Public comments may be posted on the Committee website or otherwise accessed by members of the public.

5.2.3. Oral comments

Consistent with state legal requirements, members of the public will have the opportunity to provide oral comments or raise questions at public Committee meetings. The Committee welcomes oral comments and questions in its public meetings and encourages interested members of the public to follow up with written comments or questions to provide a more comprehensive record for Committee deliberations.

5.2.4. Public Records Act

Anyone contacting the Committee through should be advised that their public comments will become matters of public record. CalEPA may post comments received on the Committee’s website. Any emails or other written communications with CalEPA or individual Committee members are also potentially subject to the Public Records Act.

5.3. Committee materials

5.3.1. Meeting recordings

Records of all public Committee meetings are to be made available to the public. In earlier meetings, CalEPA arranged or a court reporter to provide an official transcript. More recently (and for web-based meetings in particular), CalEPA has arranged to make a digital video recording on the IEMAC website.

5.3.2. Document availability

All public documents and materials will be made available on the Committee’s website.

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6. Appendix

6.1. Core legal authority

Health & Safety Code § 38591.2

- (a) The Independent Emissions Market Advisory Committee is hereby established within the California Environmental Protection Agency.
- (b) (1) (A) The committee shall be composed of at least five experts on emissions trading market design appointed according to the following:
 - (i) Three members appointed by the Governor.
 - (ii) One member appointed by the Senate Committee on Rules.
 - (iii) One member appointed by the Speaker of the Assembly.
- (B) (i) The committee shall include a representative from the Legislative Analyst’s Office.
- (ii) The representative from the Legislative Analyst’s Office shall be a nonvoting committee member.
- (2) The committee members shall meet all of the following requirements:
 - (A) Have academic, nonprofit, and other relevant backgrounds.
 - (B) Lack financial conflicts of interest with entities subject to the regulation adopted by the state board pursuant to subdivision (c) of Section 38562.
- (c) The committee, at least annually, shall hold a public meeting and report to both the state board and the Joint Legislative Committee on Climate Change Policies on the environmental and economic performance of the regulation adopted by the state board pursuant to subdivision (c) of Section 38562 and other relevant climate policies.
- (d) The activities of the committee pursuant to this section shall not be subject to subdivision (b) of Section 11122.5 of the Government Code.
- (e) This section shall remain in effect only until January 1, 2031, and as of that date is repealed.

Legislative history: Added by AB 398 (Stats. 2017, Ch. 135); amended by SB 85 (Stats. 2019, Ch. 31).

6.2. Official correspondence

Here is a list of official correspondence involving the Committee:

- CalEPA letter to FPPC (Nov. 2018), not publicly posted.
- FPPC reply letter to CalEPA (Dec. 2018), http://www.fppc.ca.gov/content/dam/fppc/NS-Documents/LegalDiv/Exemptions_and_Extensions_18751/Exemptions/E-18-005.pdf.
- Letter from Senator Ben Allen et al. to CARB, CalEPA, and the IEMAC (March 2019), https://calepa.ca.gov/wp-content/uploads/sites/6/2019/09/IEMAC-Meeting-Materials-9-20-19-Legislative_Letter.ahp_.pdf.

6.3. CalEPA guidance documents

Here is a list of CalEPA guidance documents the Committee has received:

- IEMAC Process Memo (June 2018), <https://calepa.ca.gov/wp-content/uploads/sites/6/2018/06/IEMAC-Process-Memo-June-2018.pdf>.
- IEMAC Bagley-Keene Memo (June 2018), <https://calepa.ca.gov/wp-content/uploads/sites/6/2018/06/IEMAC-Bagley-Keene-Memo-June-2018-1.pdf>.
- IEMAC Serial Meetings Memo (Aug. 2019), not publicly posted.