



# CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY



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## MEMORANDUM

TO: Members of the Economic and Allocation Advisory Committee

FROM: Steve Koyasako  
Special Counsel to the Secretary  
California Environmental Protection Agency

DATE: June 29, 2009

SUBJECT: CALIFORNIA OPEN MEETING LAWS

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Congratulations on your appointment to the Economic and Allocation Advisory Committee (Committee). We have provided this memorandum to let the new members of the Committee know about the open meeting laws that apply to the Committee. California's open meeting laws require most state and local bodies to conduct their meetings in public unless specifically authorized to meet in closed session. These laws apply to certain advisory bodies, such as the Committee. This means that the Committee must conduct all meetings in public and meet various other requirements that are described below.

The specific open meeting law that applies to the Committee and other "state bodies" is called the Bagley-Keene Open Meeting Act (Act), which is set forth in Government Code sections 11120-11132. It is similar to the Ralph M. Brown Act (Gov. Code § 54950 et seq.), which applies to local legislative bodies such as the governing boards of cities, counties, and school districts.

Attached to this memorandum is "A Handy Guide to the Bagley-Keene Open Meeting Act 2004" (Guide), which is published by the California Attorney General's Office. It contains an introductory discussion of the Act, followed by the text of the Act itself. Although the Guide is dated 2004, the Act has not changed significantly since 2004, and the introductory discussion is up to date. After the introductory discussion, we have substituted the most recent (2009) version of the Act.

As mentioned above, the Act requires all "meetings" of the Committee to be open to the public (see the section entitled "Advisory Bodies" on page 3 of the Guide). In general, a meeting

occurs when a quorum of the body meets in one place to address issues under the body's jurisdiction. The general rule under Roberts Rules of Order is that a quorum consists of a majority (i.e., more than half) of the current membership of a board or committee. Since the Committee has 17 appointed members, a quorum of the Committee would ordinarily be 9 members. Consequently, any gathering to discuss Committee business would be an illegal meeting if 9 or more Committee members are present at the meeting. A gathering of 8 or fewer members does not constitute a "meeting" under the Act because a quorum is not present.

However, it is important to realize that the term "meeting" also covers situations that you might ordinarily not think of as a "meeting." The Act also prohibits what are known as "serial meetings." We advise you to carefully read pages 5 and 6 of the Guide, which explains the types of situations that constitute a serial meeting. It is surprisingly easy to participate in a serial meeting if one is not careful. For example, a serial meeting would occur if one member of the Committee makes 8 separate phone calls to 8 other Committee members to develop a collective concurrence about what action the Committee should take on a particular issue. In open meeting parlance, the member who initiated the communications would be acting as the "hub of the wheel" by communicating with 8 other members (the "spokes" of the wheel) to conduct a serial meeting with a quorum of 9 members. In this situation, a serial meeting has occurred even though none of the members were physically present in the same place at the same time, and no more than two Committee members ever participated in an individual conversation about the issue. Therefore, members of the Committee must refrain from conducting serial meetings of a quorum of the Committee by calling or otherwise contacting other members on an individual basis in order to arrive at a collective decision outside a publicly-noticed meeting.

A serial meeting can also occur by an exchange of e-mails between a quorum of Committee members. Like face-to-face meetings or telephone conversations, e-mail contacts with a quorum would be an improper serial meeting if the e-mails are used to develop a "collective concurrence" concerning action to be taken by the Committee. E-mails not used to develop a collective concurrence are permissible. You should be aware, however, that the Attorney General's office has broadly interpreted the phrase "collective concurrence" to include any substantive discussions "which advance or clarify a member's understanding of an issue, or facilitate an agreement or compromise among members, or advance the ultimate resolution of an issue." Thus, a "meeting" also includes briefings and other situations where members merely receive information regarding an issue before the Committee. That being said, however, members of the Committee should generally feel free to contact California Environmental Protection Agency (Cal/EPA) or Air Resources Board (ARB) staff on a one-on-one basis, in order to ask questions or to discuss issues of concern.

Exchanging e-mails on any subject is permissible if less than a quorum participates in the exchange. So a subcommittee consisting of less than a quorum (i.e., 8 or fewer members) could be formed, and e-mail communications between the subcommittee members would be permissible. Problems can arise, however, because it is very easy for e-mail recipients to forward e-mails to other Committee members, who then send the e-mails to still other members, until eventually a quorum of members has improperly engaged in a serial meeting to discuss an issue via e-mail. Therefore, Committee members must be very careful when communicating by e-mail to other members. The safest approach is to avoid substantive communications and confine e-mails to logistical issues such as possible dates and locations of future meetings.

Following are some additional open meeting requirements that you should be aware of:

- A public notice and meeting agenda must be prepared and made available to the public at least 10 days before each meeting (see pages 7 and 8 of the Guide). The notice must also be made available in appropriate alternate formats upon request by any person with a disability. Cal/EPA staff can take care of sending out the notice and the agenda, although the Committee should decide what items will appear on the agenda and the time and date of the meeting.
- Special rules apply to meetings involving teleconferencing – see page 7 of the Guide and Government Code section 11123. We emphasize that every teleconference meeting location must be identified in the notice and agenda, and that the members of the Committee must attend the meeting at locations that are open to the public. Members may not attend the meeting by teleconference from their offices, homes, or other locations unless those locations are publicly-noticed and publicly-accessible.
- Members of the public must be allowed to attend all meetings, and must be given an opportunity to address the Committee on each agenda item before or during the Committee's discussion of the item. Pages 9 and 10 of the Guide summarize the rights of the public to participate in meetings.

The Act contains many other provisions besides the ones mentioned above. These provisions are described in the Guide. In addition, Cal/EPA staff will be available to advise you on open meeting requirements as situations arise in the future.

We hope that you find this memorandum helpful in answering questions you may have about the open meeting requirements of the Act. If you have any questions on this memorandum, please feel free to contact me at (916) 327-5719 or [skoyasako@calepa.ca.gov](mailto:skoyasako@calepa.ca.gov).

Attachments