

CARB Advisory Committee Transparency Requirements (October 2022)

This document provides a summary and reminder of key components of transparency-related legal requirements for advisory committees of the California Air Resources Board (CARB). These advisory groups include the Assembly Bill 617 Consultation Group, Environmental Justice Advisory Committee, Research Screening Committee, and the Scientific Review Panel on Toxic Air Contaminants.

This summary is not comprehensive, and the legal requirements are subject to change. Please also note that this summary does not represent legal advice and does not itself impose any binding requirements. Advisory group members may seek their own legal advice. CARB is providing this summary as a high-level overview and general reference. For specific questions, please contact your CARB staff liaison.

Bagley-Keene Open Meeting Act

As state bodies, the advisory committees listed above must comply with the Bagley-Keene Open Meeting Act. ("Bagley-Keene Act;" Gov. Code, §§ 11120-11133.) CARB staff liaisons to the advisory committees work to ensure committee meetings are compliant with the Bagley-Keene Act and provide the required elements for transparency to the public. These requirements include proper ten-day notice of the agendas for committee meetings, public access to the meetings, and the opportunity for public comment, among other related requirements. (Gov. Code, §§ 11124, 11124.1, 11125, and 11125.7.) All committee business must be carried out during a public meeting, including voting and making decisions within the committee's area of jurisdiction, which must be made with a quorum present and a majority of the committee in support of the action.

Effective June 30, 2022, until July 1, 2023, the Legislature reinstated the Bagley-Keene Act exemptions that had previously been implemented as part of the public-health-related Executive Orders issued during the COVID-19 pandemic. (Gov. Code, § 11133.) Government Code Section 11133 applies to all state bodies and allows, but does not require, state bodies to meet entirely by teleconference, by suspending all physical presence requirements. Section 11133 prevails over any other conflicting Bagley-Keene Act sections that would otherwise apply (e.g., sections requiring physical presence or notice and publicly accessible teleconference locations). Thus, until July 1, 2023, state bodies are not required to list committee members' remote locations in the notice or make the location accessible to the public, and without needing to have a quorum in a single physical location. State bodies should continue to make sound and reasonable efforts to adhere to all other Bagley-Keene provisions to ensure public transparency.

Other parts of Bagley-Keene remain in place. In particular, the law prohibits situations typically referred to as "serial meetings" among a quorum of members. (Gov. Code, § 11122.5 Subd. (b)(1).) This prohibition applies to direct or indirect communications with

other members that one might ordinarily not think of as a “meeting,” such as emails, phone calls, or text messages. A prohibited serial meeting can occur through a series of one-on-one or subquorum communications that ultimately involve a quorum of members deliberating on an item within the committee’s jurisdiction over a period of time. Violations of these requirements, depending on the facts, can result in an action by the advisory committee being voided, criminal misdemeanors, and harm to public trust in the transparency of government business. For this reason, it is important for advisory committee members to generally only discuss matters within the advisory committee’s jurisdiction with each other at a noticed public meeting of the committee, and, if any subquorum discussions outside of noticed public meetings, these remain limited to a subquorum of members.

In addition to these meeting requirements, any document pertaining to an agenda item, if shared with a quorum of members must also be made available to the public. (Gov. Code, § 11125.1, Subd. (a) and (b).) Generally, CARB staff will post these materials to the CARB website. If advisory committee members receive documents pertaining to agenda items that CARB staff are not aware of (such as by emails directly to advisory committee members only), CARB staff request that members share those with CARB so that staff can post those online to ensure compliance with the public availability requirement.

Conflicts of Interest

Advisory committee members are also subject to certain conflict of interest rules.

In particular, advisory committee members are also specifically prohibited from making a *formal or informal* appearance before, or oral or written communication to CARB for, the purpose of influencing a decision by CARB on a contract, grant, loan, license, permit, or other entitlement for use. (Gov. Code, § 87104.) A prohibited communication could include applications, letters, emails, phone calls, meetings, or any other form of oral or written communication within or outside of a public committee meeting with CARB, or CARB staff, for the purpose of influencing a CARB decision on an application for funding submitted to CARB.

For this reason, advisory committee members may not be a signatory, administrator, or Principal Investigator or co-Principal Investigator on a grant application or contract bid, or on any resulting contract or grant agreement. Advisory committee members should not be listed on the grant application or contract bid except as necessary to show their role in the organization. A knowing or willful violation of this section may result in a member being guilty of a misdemeanor and fined up to the greater of \$10,000 or three times the amount of the amount unlawfully received. If a court determines a violation occurred and that the official action might not otherwise have been taken or approved if not for the prohibited communication, the contract or grant may be voided. (See Gov. Code §§ 91000, 91003.)

Note that an advisory committee member’s organization may continue to be eligible for a grant or contract. However, the grant or contract must not follow any communications for purposes of influence by the advisory committee member on CARB’s decision on that particular agreement. Additionally, that organization would need to identify a different member of the organization to sign or be the administrator for any applications and awarded

grants or contracts. Please also note this prohibition does not extend to general advocacy by advisory committee members to CARB for general policies, programs, or funding allocations related to the interest group or community that they may be appointed to represent. The prohibition is limited to appearances or communications relevant to a specific contract, grant, loan, license, permit, or other entitlement for use being offered by CARB.

Public Records Act

In addition to the serial meeting restrictions discussed above, the use of personal email, texts, or messaging applications to discuss committee business either within or outside of the public meeting setting may be required to be gathered and produced to the public if responsive to a Public Records Act request. (See Gov. Code, § 6250 et seq.) If a request is received by CARB and the member has records that are responsive to this request, CARB would work with the member to gather and produce such responsive records. To avoid generating such public documents, members may prefer to avoid substantive written communications with fellow committee members, and to confine emails and texts to logistical issues only, such as possible dates and/or locations of future meetings. By discussing substantive committee business during public meetings only, all records of the Committee will be publicly available on CARB's website.

Again, please contact your CARB liaison with questions.