

Update to Bagley-Keene Open Meeting Act

This document provides a summary and updates of key components of legal requirements under the Bagley-Keene Open Meeting Act (Bagley-Keene Act) for advisory groups of the California Air Resources Board (CARB). These advisory groups include the AB 617 Consultation Group. 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 Liliana Nunez at Liliana.Nunez@arb.ca.gov.

As a state body, the AB 617 Consultation Group must comply with the Bagley-Keene Act. (Gov. Code, §§ 11120-11133.) These requirements include proper 10-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. 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).)

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. By its language, section 11133 prevails over any conflicting Bagley-Keene Act sections that would otherwise apply (e.g., sections requiring physical presence or noticed and publicly accessible teleconference locations). Thus, until July 1, 2023, state bodies are not required to list members' remote locations in the notice or make the location accessible to the public, and do not need to have a quorum in a single physical location (a quorum must still be present and members appearing remotely may be counted as part of the quorum). The public must be given a telephonic or teleconferencing means to observe and address a teleconference meeting; Zoom, webcast plus a telephone line, or even just a telephone line for the public to participate would satisfy this requirement. The 10-day notice requirements still apply with one additional flexibility: the state body may make changes regarding the means of public participation after the notice has issued, as long as it communicates this change using the most rapid means of communication available at the time, including but not limited to, posting the change on its public website. Additionally, the notice must include information on how the public can request Americans with Disabilities Act (ADA) or other reasonable accommodation and state bodies must make reasonable efforts to accommodate requests received

Revised July 8, 2022

(e.g., using closed captioning for the hearing impaired). State bodies should continue to make sound and reasonable efforts to adhere to all other Bagley-Keene provisions to ensure public transparency.