



# **Advisory Committee Transparency Requirements**

# Advisory Committee Transparency Requirements

- Three important transparency requirements:
  - Conflict of Interest (Gov. Code § 87104)
  - Bagley-Keene Open Meeting Act (Gov. Code §§ 11120 et seq.)
  - Public Records Act (Gov. Code §§ 7920.000 et seq.)
- CARB released a document explaining transparency requirements in October 2022

# CONFLICT OF INTEREST LAW

*Gov. Code § 87104*

# Conflict of Interest Law

- Government Code section 87104 prohibits:
  - Advisory committee members;
  - 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.



# Prohibited Communications or Appearances

- A prohibited communication could include the following:
  - Applications or agreements
  - Letters
  - Emails
  - Phone calls
  - Meetings
  - Any other form of oral or written communication

# What Does this Mean?

- 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.

# Consequences of Noncompliance

Potential consequences for knowing or willful violations of Government Code section 87104 include:

- An advisory committee member may be found guilty of a misdemeanor and fined up to the greater of \$10,000 or three times the amount of the amount unlawfully received.
- The contract or grant may be voided and money may need to be returned.
- Other consequences imposed by courts, district attorneys, the Attorney General, and Fair Political Practices Commission.



# What is Allowed?

- An advisory committee member's organization may continue to be eligible for a grant or contract.
- The advisory committee member may still engage in general advocacy for general policies, programs, or funding allocations related to the interest group or community that they may be appointed to represent.



# BAGLEY-KEENE OPEN MEETING ACT

*Gov. Code §§ 11120 et seq.*

# Bagley Keen Applies to State Bodies

- An advisory committee is a state body if:
  - Created by formal action of the state body or of any member of the state body, and
  - If the advisory body so created consists of three or more persons.

# Bagley-Keene Requirements

- The Bagley-Keene Open Meeting Act requires:
  - 10-day notice of agendas for committee meetings
  - Public access to meetings and opportunity for public comment
- Effective June 30, 2022, until July 1, 2023, Gov. Code section 11133 allows state bodies to meet entirely by teleconference.

# CALIFORNIA PUBLIC RECORDS ACT (CPRA)

*Gov. Code §§ 7920.000 et seq.*



# CPRA Requirements

- Documents and records related to advisory committee business may be subject to public disclosure under the CPRA, including the use of personal email, texts, or messaging applications to discuss committee business either within or outside of the public meeting setting.
- If a CPRA request is received by CARB and an advisory committee member has records that are responsive to this request, CARB staff would work with the member to gather and produce such responsive records.