

Admin.

April 7, 2014

## Memorandum 2014-11

**Open Government Laws**

At its last meeting, the staff presented the Commission with an annual memorandum<sup>1</sup> identifying and briefly summarizing the “open government” statutes applicable to the Commission.<sup>2</sup>

As a follow-up to that presentation, the Commission asked the staff to confirm that the Commission’s current practice regarding dissemination of material at meetings complies with the requirements of the Bagley-Keene Open Meeting Act<sup>3</sup> (hereafter, “Bagley-Keene Act”).<sup>4</sup> The request was prompted by a question as to whether a recent amendment to the Ralph M. Brown Act<sup>5</sup> (hereafter, “Brown Act”), which governs meetings conducted by local agencies,<sup>6</sup> had any application to the Commission’s dissemination practice.

This memorandum addresses the question raised.

Except as otherwise indicated, all statutory references in this memorandum are to sections of the Government Code.

## DISSEMINATION OF MATERIALS AT PUBLIC MEETINGS

**Requirements of the Brown Act**

Prior to 2007, the requirements of the Brown Act relating to dissemination of meeting materials, contained in Section 54957.5, were substantially identical to the requirements of the Bagley-Keene Act relating to that dissemination.<sup>7</sup>

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1. Any California Law Revision Commission document referred to in this memorandum can be obtained from the Commission. Recent materials can be downloaded from the Commission’s website ([www.clrc.ca.gov](http://www.clrc.ca.gov)). Other materials can be obtained by contacting the Commission’s staff, through the website or otherwise.

The Commission welcomes written comments at any time during its study process. Any comments received will be a part of the public record and may be considered at a public meeting. However, comments that are received less than five business days prior to a Commission meeting may be presented without staff analysis.

2. Memorandum 2014-1.

3. Sections 11120-11132.

4. The Bagley-Keene Act governs meetings conducted by state bodies, such as the Commission.

5. Sections 54950-54963.

6. Section 54951.

7. *Cf.* Section 11125.1(b).

However, in 2007, the Legislature amended Section 54957.5 to add the following language:

54957.5. ....

(b)(1) If a writing that is a public record under subdivision (a), and that relates to an agenda item for an open session of a regular meeting of the legislative body of a local agency, is distributed less than 72 hours prior to that meeting, the writing shall be made available for public inspection pursuant to paragraph (2) at the time the writing is distributed to all, or a majority of all, of the members of the body.

(2) A local agency shall make any writing described in paragraph (1) available for public inspection at a public office or location that the agency shall designate for this purpose. Each local agency shall list the address of this office or location on the agendas for all meetings of the legislative body of that agency. The local agency also may post the writing on the local agency's Internet Web site in a position and manner that makes it clear that the writing relates to an agenda item for an upcoming meeting.<sup>8</sup>

....

### **Requirements of Bagley-Keene Act**

The bill amending Section 54957.5 did not amend the Bagley-Keene Act. The requirements of the Bagley-Keene Act relating to dissemination of meeting materials, contained in Section 11125.1, continue to read as follows:

11125.1. ....

(b) Writings that are public records under subdivision (a) and that are distributed to members of the state body prior to or during a meeting, pertaining to any item to be considered during the meeting, shall be made available for public inspection at the meeting if prepared by the state body or a member of the state body, or after the meeting if prepared by some other person....

These requirements are somewhat different than those added to Section 54957.5 in 2007. Section 11125.1 contains no special rule relating to material distributed to a meeting body less than 72 hours prior to a meeting, and mandates no special procedure by which that material must be made available to the general public.

Instead, Section 11125.1 requires only that meeting material distributed to a meeting body be made available for public inspection, "at the meeting" if

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8. 2007 Cal. Stat. ch. 298 (SB 343 (McLeod)).

prepared by the body or a member of the body, or “after the meeting” if prepared by a third party.

### **Compliance with Bagley-Keene Act**

The Commission’s regular document distribution practice complies with the requirements of Section 11125.1.

All written materials presented by the Commission, for use at a Commission meeting, are made available to the public *before or at* the meeting. The materials are uploaded to the Commission’s website and notice of their availability is sent to those who have subscribed to receive such notice (the notice includes a direct link to download a PDF copy of the material). In some cases, hard copies are mailed directly to subscribers.

In addition, extra copies of all materials are carried to the meeting. While the general purpose of doing so is to have replacement copies available for Commissioners if necessary, they are also available for public inspection on request.

If a member of the public provides written material to the Commission at a meeting, that material is put into our record and distributed to the public *after* the meeting. It is attached to a supplement to the memorandum to which it relates, which is then distributed through the normal process.

Respectfully submitted,

Steve Cohen  
Staff Counsel