

**Staff Memorandum 2026-04**  
**Open Government Laws and Related Matters**

This memorandum discusses “open government” laws relevant to the Committee, including open meeting, conflict of interest, and public records laws relating to Committee activities. Staff will periodically provide this memorandum to Committee members.

Note that this memorandum is adapted from a similar document prepared by the staff of the California Law Revision Commission.<sup>1</sup> It has been edited to focus on the issues most germane to members of the Committee.

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<sup>1</sup> California Law Revision Commission, Staff Memorandum 2026-06.

### **Bagley-Keene Open Meeting Act**

The Bagley-Keene Open Meeting Act<sup>2</sup> requires that “the proceedings of public agencies be conducted openly so that the public may remain informed.”<sup>3</sup> The California Constitution also requires that statutes and other authorities furthering the public’s right of access to meetings of public bodies be broadly construed and authority limiting that right of access be narrowly construed.<sup>4</sup> Committee meetings are open to the public and subject to Bagley-Keene.

Bagley-Keene defines a “meeting” as “any congregation of a majority of the members of a state body at the same time and place to hear, discuss, or deliberate upon any item that is within the subject matter jurisdiction of the state body to which it pertains.”<sup>5</sup>

For example, if a majority of Committee members were to discuss an item within the subject matter jurisdiction of the Committee over lunch, that discussion could be considered a “meeting” under Bagley-Keene and need to comply with various provisions of the law, including public access and advance notice.<sup>6</sup>

#### **Public participation**

A state body must provide an opportunity for members of the public to comment on each agenda item “before or during the body’s discussion or consideration of the item.”<sup>7</sup>

#### **Accessibility**

Meetings governed by Bagley-Keene must comply with the relevant provisions of the Americans with Disabilities Act of 1990 and its implementing regulations.<sup>8</sup> The ADA provides generally that individuals with disabilities may not be excluded from participating in the activities of a public entity or be discriminated against by any such entity because of their disability.<sup>9</sup>

#### **Reporting of actions taken and individual votes**

State bodies must publicly report all actions taken at meetings, as well as the vote or abstention on each action by each member present.<sup>10</sup>

An “action taken” is “a collective decision made by the members of a state body, a collective commitment or promise by the members of the state body to make a

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<sup>2</sup> Government Code §§ 11120–11132.

<sup>3</sup> Government Code § 11120.

<sup>4</sup> Cal. Const. art I, § 3(b)(1)–(2).

<sup>5</sup> Government Code § 11122.5(a).

<sup>6</sup> Government Code § 11125(a).

<sup>7</sup> Government Code § 11125.7(a).

<sup>8</sup> Government Code § 11123.1.

<sup>9</sup> 42 U.S.C. § 12132.

<sup>10</sup> Government Code § 11123(c).

positive or negative decision, or an actual vote by the members of a state body when sitting as a body or entity upon a motion, proposal, resolution, order, or similar action.”<sup>11</sup>

The Committee complies with this reporting requirement through its meeting minutes. The minutes state that, unless otherwise indicated, Committee decisions noted in the minutes were approved by all Committee members present at the meeting.<sup>12</sup> The minutes then specifically note any “no” votes, abstentions, or temporary absences when a decision was made.

Because of this approach, it is critical that Committee members expressly state when they oppose or abstain from approving an action.

### **Prohibited communications outside noticed meeting**

The intent of Bagley-Keene is to require that the business of state bodies be conducted openly. The law contains a series of provisions allowing the general public reasonable access to and participation in the meetings of state bodies where such business is likely to be conducted.

To preclude a state body from conducting its business outside a noticed public meeting, Bagley-Keene also prohibits certain communication among members outside such meetings. Specifically, Government Code section 11122.5(b)(1) provides:

A majority of the members of a state body shall not, outside of a meeting authorized by [Bagley-Keene], use a series of communications of any kind, directly or through intermediaries, to discuss, deliberate, or take action on any item of business that is within the subject matter of the state body.

Note that this code section prohibits so-called “serial meetings”: “several communications, each among less than a majority of a state body, which taken together involve a majority.”<sup>13</sup>

### *Individual contacts with Committee members*

Bagley-Keene expressly allows communication between a member of the public and a member of a state body but those communications must still comply with Government Code section 11122.5(b)(1).<sup>14</sup> Individual conversations between Committee members and stakeholders can be problematic when those conversations cumulatively amount to deliberation by a majority of the Committee members.

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<sup>11</sup> Government Code § 11122.

<sup>12</sup> See, e.g., Staff Memorandum 2025-17.

<sup>13</sup> California Department of Justice, *Bagley-Keene Open Meeting Act Guide*, 6 (2024).

<sup>14</sup> Government Code § 11122.5(c)(1).

Given that, each individual Committee member can use their discretion in deciding whether to meet with interested parties outside of the Committee's public forums on issues before the Committee.

*Legislative contacts*

Bagley-Keene does not prohibit contact by one or more members or employee of a state body with members of a legislative body for the purpose of discussing a matter within the subject matter jurisdiction of the state body, provided the member does not communicate to the legislative body the comments or position of any other member of the state body.<sup>15</sup>

*Attendance at conferences or similar gatherings*

The prohibition on communication outside of a meeting does not preclude participation at "a conference or similar gathering open to the public," so long as the members of the state body do not use the opportunity to discuss business within the subject matter jurisdiction of the state body, unless the discussion is "part of the scheduled program."<sup>16</sup>

**Teleconference meetings**

Three different sections of Bagley-Keene authorize public bodies to conduct meetings via teleconference, with each section requiring compliance with distinct procedural requirements.<sup>17</sup> As an "advisory body," the Committee uses the procedures described in Government Code section 11123.5 to conduct its meetings via teleconference.<sup>18</sup>

Committee members should be aware that the law requires that they "shall visibly appear on camera during the open portion of a meeting that is publicly accessible via the internet or other online platform."<sup>19</sup> This requirement does not apply if "the appearance would be technologically impracticable, including, but not limited to, when the member experiences a lack of reliable broadband or internet connectivity that would be remedied by joining without video, or when the visual display of meeting materials, information, or speakers on the internet or other online platform requires the visual appearance of a member of a state body on camera to cease."<sup>20</sup>

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<sup>15</sup> Government Code § 11122.5(b)(2).

<sup>16</sup> Government Code § 11122.5(c)(2)-(5).

<sup>17</sup> Government Code §§ 11123(b), 11123.2, and 11123.5.

<sup>18</sup> Government Code § 11123.5(b). These provisions currently sunset at the end of 2029. Government Code § 11123.5(k).

<sup>19</sup> Government Code § 11123.5(h).

<sup>20</sup> Government Code § 11123.5(h).

**Enforcement**

It is a misdemeanor offense for any “member of a state body who attends a meeting of that body in violation of any provision of this article, and where the member intends to deprive the public of information to which the member knows or has reason to know the public is entitled under this article.”<sup>21</sup>

**Conflict of Interest Provisions**

Committee members should also be aware of various conflict of interest provisions that may apply to them.

**Political Reform Act of 1974**

Government Code section 87100 provides that public officials “shall not make, participate in making, or in any way attempt to use the public official’s position to influence a governmental decision in which the official knows or has reason to know the official has a financial interest.”

Whether a public official has a material “financial interest” in a governmental decision is a complex subject, generally addressed by Government Code section 87103. Though the application of these Government Code sections to specific fact patterns is beyond the scope of this memorandum, information concerning the Political Reform Act of 1974 is available on the website of the Fair Political Practices Commission, at [www.fppc.ca.gov](http://www.fppc.ca.gov).

**Financial interest in contract made by state agency**

Government Code section 1090(a) prohibits officers or employees of the state and other governmental entities from being “financially interested” in any contract that is made either by the officer or employee in their official capacity, or by a body of which they are members.

A contract that violates Government Code section 1090 may be “avoided” by any party to the contract except the interested officer.<sup>22</sup> In addition, a “willful” violation of Section 1090 is a felony offense punishable by a fine of up to \$1,000 or imprisonment for up to 3 years and permanent disqualification from holding any state office.<sup>23</sup> A non-willful violation of the section can also result in civil consequences.<sup>24</sup>

**Other financial relationships with the state***Prohibition on compensation from state contracts*

Under Public Contract Code section 10410, appointed officials and employees of the state are prohibited from engaging in outside employment or other activity

<sup>21</sup> Government Code § 11130.7.

<sup>22</sup> Government Code § 1092(a).

<sup>23</sup> Government Code § 1097(a).

<sup>24</sup> See *Thomson v. Call*, 38 Cal.3d 633, 647–653 (1985).

generating a financial interest that is sponsored or funded by a contract with a state agency, unless required to do so as a condition of their state employment.

The same section also bars any state officer or employee from independently contracting with any state agency to provide goods or services on that person's own behalf.

The application of this section is somewhat unclear, as it has apparently yet to be construed in any reported appellate opinion.

*Post-employment financial relationship*

Public Contract Code section 10411 prohibits state officials and employees from entering into specified contracts for a limited period of time after separation from state service.

- Section 10411(a) prohibits state officials and employees, for a period of two years after service, from entering into any contract in which the official or employee had specified involvement prior to separation.
- Section 10411(b) prohibits state officials and employees, for a period of one year after service, from entering into any contract with the agency with whom the official or employee served.

Violation of either provision renders the contract at issue void, unless the violation is “technical or nonsubstantive.”<sup>25</sup> A violation can also subject the state official or employee to civil and criminal sanctions.<sup>26</sup>

**Common-law doctrine against conflicts of interest**

Independent of statutory conflict of interest provisions, the California Attorney General recognizes a common-law doctrine against conflicts of interest that may be applicable to Committee members. This doctrine extends to both economic and noneconomic conflicts of interest. It generally requires public officers “to avoid placing themselves in a position in which personal interest may come into conflict with their duty to the public.”<sup>27</sup>

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Committee members should be cautious regarding potential contracting or other conflicts. Please bring any concerns to staff's attention for further discussion.

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<sup>25</sup> Public Contract Code § 10420.

<sup>26</sup> Public Contract Code §§ 10421–10425.

<sup>27</sup> 92 Ops. Cal. Att’y Gen. 19, 47 (2009) (citation omitted).

**California Public Records Act**

The Committee is subject to the California Public Records Act.<sup>28</sup> As a result, members of the public are generally entitled to inspect and copy Committee records to the extent and in the manner provided by the CPRA.<sup>29</sup>

The Committee very occasionally receives public record requests and staff handles them administratively. If a Committee or staff member uses a personal electronic communication account to conduct Committee business — including personal cell phones — those writings may be subject to CPRA disclosure.<sup>30</sup>

Staff will work with Committee members as needed to address CPRA requests.

**Conclusion**

Staff looks forward to briefly addressing these issues with the Committee at its next meeting.

Respectfully submitted,

Thomas M. Nosewicz  
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<sup>28</sup> Government Code §§ 7920.530, 7920.540.

<sup>29</sup> See generally Government Code § 7922.525(a).

<sup>30</sup> *City of San Jose v. Superior Court*, 2 Cal.5th 608, 613 (2017).