

MEMORANDUM 2025-3

Open Government Laws

Near the beginning of each calendar year, the staff presents the Commission with a memorandum¹ identifying and summarizing “open government” laws applicable to the Commission.²

This is the memorandum for 2025. Consistent with past memoranda, the memorandum again discusses open meeting, conflict of interest, and public records laws relating to Commission activities. Much of the discussion repeats material presented in [Memorandum 2024-2](#).

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

BAGLEY-KEENE OPEN MEETING ACT

The Bagley-Keene Open Meeting Act (hereafter, “Act”)³ requires that “the proceedings of public agencies be conducted openly so that the public may remain informed.”⁴ 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.⁵

A summary of the Act’s provisions most relevant to Commission operations follows.

Definitional Provisions

An understanding of two basic definitional provisions is important to an understanding of the Act as a whole.

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). 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. See Minutes ([Feb. 2010](#)), p. 4.

3. Gov’t Code §§ [11120-11132](#).

4. Gov’t Code § [11120](#).

5. Cal. Const. [art I, § 3\(b\)\(1\)-\(2\)](#).

“State Body”

The specific provisions of the Act apply to “state bodies,” a term defined by the act.⁶ Pursuant to that definition, the Commission is a state body.⁷

“Meeting”

The Act defines a “meeting” for purposes of the act as including “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.”⁸

Therefore, for example, **if a majority of Commissioners were to discuss an item within the subject matter jurisdiction of the Commission over lunch, that discussion could be considered a “meeting” for the purposes of the Act.**

Notice of Meeting

A state body must provide notice of an upcoming meeting on the Internet, including the name, address, and telephone number of any person who can provide further information prior to the meeting, at least 10 days in advance of the meeting.⁹

The state body must also provide written notice of an upcoming meeting to any person who requests notice in writing, including the Internet address where notices required by the Act are made available.¹⁰

Notice of and Content of Agenda

The required notice of an upcoming meeting must also include a specific agenda for the meeting that briefly describes each item of business intended to be discussed or acted on, in either open or closed session.¹¹

Description of Agenda Items

The brief description of an item in a meeting agenda “generally need not exceed 20 words.”¹² However, an official Attorney General opinion¹³ cited in the California Department of Justice’s 2024 Bagley-Keene Open Meeting Act Guide (DOJ Guide)

6. Gov’t Code § [11121](#).

7. Gov’t Code §§ [11121\(a\)](#), [8280](#).

8. Gov’t Code § [11122.5\(a\)](#).

9. Gov’t Code § [11125\(a\)](#).

10. *Id.*

11. Gov’t Code § [11125\(b\)](#). A description of an item to be discussed or acted on in closed session must include a citation of the specific statutory authority under which the closed session is being held. *Id.*

12. *Id.*

13. [67 Ops. Cal. Att’y Gen. 84](#) (1984).

advises that each description “must give the average person enough information to decide whether to attend or participate in the meeting.”¹⁴ The DOJ Guide further advises that the description (1) should not require the public to be “clairvoyant or have had collateral information” to understand a state body’s intended action, (2) must not be misleading, and (3) should convey the whole scope of a listed item.¹⁵

Adding Items to Agenda After Agenda Publication

The Act further provides that “[n]o item shall be added to the agenda subsequent to the provision of notice of a meeting including a specific agenda for the meeting, unless expressly permitted by the Act.”¹⁶ Two recognized exceptions to this requirement are items considered at an emergency meeting,¹⁷ or items requiring immediate action that came to the body’s attention less than 10 days before the meeting.¹⁸

Conduct of Meeting

The Act generally requires that all state body meetings be open and public, and that all members of the public be permitted to attend such meetings.¹⁹

Meetings are also subject to the following more specific provisions.

Public Participation

At a meeting, a state body must provide an opportunity for members of the public to directly address the state body on each agenda item, “before or during the body’s discussion or consideration of the item.”²⁰

Accessibility

Meetings governed by the Act must comply with Section 202 of the Americans with Disabilities Act of 1990²¹ and implementing regulations.²² Section 202 provides generally that individuals with disabilities may not be excluded from participation in the activities of a public entity, or be subjected to discrimination by any such entity, by reason of their disability.

14. California Department of Justice, *Bagley-Keene Open Meeting Act Guide* (2024), p. 13.

15. *Id.*

16. Gov’t Code § [11125\(b\)](#).

17. See Gov’t Code §§ [11125.3\(a\)\(1\)](#), [11125.5](#).

18. See Gov’t Code § [11125.3\(a\)\(2\)](#).

19. Gov’t Code § [11123\(a\)](#).

20. Gov’t Code § [11125.7\(a\)](#).

21. [42 U.S.C. § 12132](#).

22. Gov’t Code § [11123.1](#).

Anonymous and Unconditional Attendance

No member of the public seeking to attend a meeting governed by the Act shall be required to register by name, provide other information, or otherwise fulfill any condition precedent to their attendance.²³ A sign-in sheet may be posted at the meeting, but it must state clearly that signing or providing any information is voluntary and is not a prerequisite to attendance.²⁴

To the extent attendance at a meeting via teleconference requires the submission of “log on” information, an attendee must be permitted to use a pseudonym or other anonymous information to attend the meeting.²⁵

Audio or Video Recording of Meeting

Any person attending a meeting governed by the Act may make an audio or video recording of the proceedings, in the absence of a finding by the state body that such recording would constitute a “persistent disruption” of the proceedings.²⁶

Commission meetings conducted via teleconference are recorded and posted on the Commission website.²⁷

Disclosable Documents

The meeting agenda and any other writings distributed to a majority of the members of a state body in connection with matter subject to discussion or consideration at a meeting of the body are, subject to specified exceptions, disclosable public records under the California Public Records Act.²⁸

When such writings are prepared by the state body or a member of the state body, they must be made available for public inspection at the meeting.²⁹ If prepared by some other person, the writings must be made available after the meeting.³⁰

Reporting of Action 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.³¹

An “action taken,” for purposes of the Act, means “a collective decision made by the

23. Gov’t Code § [11124\(a\)](#).

24. Gov’t Code § [11124\(b\)](#).

25. Gov’t Code § [11124\(c\)](#).

26. Gov’t Code § [11124.1\(a\)](#).

27. www.clrc.ca.gov

28. Gov’t Code § [11125.1\(a\)](#).

29. Gov’t Code § [11125.1\(b\)](#).

30. *Id.*

31. Gov’t Code § [11123\(c\)](#).

members of a state body, a collective commitment or promise by the members of the state body to make a 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.”³²

The Commission complies with this reporting requirement through its meeting Minutes. The Minutes state that, unless otherwise indicated, Commission decisions noted in the Minutes were approved by all Commissioners present at the meeting. The Minutes then specifically note any “no” votes, abstentions, or temporary absences when a decision was made.³³

Because of that approach, it is critical that Commissioners expressly state when they oppose or are abstaining from approving a particular action.

Special Meetings

The 10-day notice and agenda requirements do not apply to a special meeting called by the state body to consider specified matters.³⁴ To hold such a meeting, at the commencement of the meeting, the state body must make one of the following findings, by a specified supermajority vote:

- Compliance with the 10-day notice requirement of [Section 11125](#) would impose substantial hardship on the body.
- Immediate action is required to protect the public interest.³⁵

Closed Sessions

A state body may conduct a portion of a meeting in closed session to consider certain matters, including specified matters relating to personnel or pending litigation but only after disclosing in both the agenda and in open session the general nature of the matter to be discussed, and citing authority for the closed session.³⁶

Adjournment

The state body may adjourn any meeting to another place and time, or continue the meeting to another time, provided that specified notice of the adjournment or continuance is thereafter provided.³⁷

32. Gov’t Code § [11122](#).

33. California Law Revision Commission, *Handbook of Practices and Procedures*, [Rule 510\(b\)](#)..

34. Gov’t Code § [11125.4\(a\)\(1\)-\(9\)](#).

35. Gov’t Code § [11125.4\(a\)](#), [\(c\)](#).

36. Gov’t Code §§ [11125\(b\)](#), [11126\(a\)\(1\)](#), [11126\(c\)](#), [11126\(e\)](#), [11126.3\(a\)](#), [11132](#).

37. Gov’t Code §§ [11128.5](#), [11129](#).

Prohibited Communications Outside Noticed Meeting

The intent of the Act is to require that the business of state bodies be conducted openly. To that end, the Act 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, the Act also prohibits certain communication among members outside such meetings. Specifically, [Section 11122.5\(b\)\(1\)](#) of the Act provides:

A majority of the members of a state body shall not, outside of a meeting authorized by [the Bagley-Keene Act], 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.

The “communications” contemplated by this provision would appear to include in-person contact, telephone calls, emails, or any other similar contact.³⁸

Individual Contacts

The Act expressly allows communication between a member of the public and a member of a state body, unless such communication violates [Section 11122.5\(b\)\(1\)](#) which prohibits 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, otherwise known as “serial meetings.”³⁹ Thus, as explained in [Memorandum 2024-22](#), individual conversations between Commissioners and stakeholders can be problematic when those conversations cumulatively amount to deliberation by a majority of the Commission. Given that, each individual Commissioner can use their discretion in deciding whether to meet with interested parties outside of the Commission’s public forums on issues before the Commission.

Legislative Contacts

The Act does not prohibit contact by one or more members 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

38. See *Wolfe v. City of Fremont* (2006) 144 Cal.App.4th 533; *Stockton Newspapers, Inc. v. Redevelopment Agency* (1985) 171 Cal.App.3d 95. These cases do not construe Gov’t Code § [11122.5\(b\)\(1\)](#), but they do construe similar provisions of the Ralph M. Brown Act (Gov’t Code §§ [54950 - 54963](#)), a counterpart to the Bagley-Keene Act applicable to local government bodies.

39. Gov’t Code § [11122.5\(c\)\(1\)](#).

legislative body the comments or position of any other member of the state body.⁴⁰

Attendance at Other Functions

The prohibition on communication outside of a meeting does not preclude participation in specified types of public events, 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.⁴¹

Enforcement

[Section 11130.7](#) provides:

Each 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, is guilty of a misdemeanor.⁴²

Teleconference Meetings

Three sections of the Act⁴³ authorize public bodies to conduct meetings via teleconference, with each section requiring compliance with distinct procedural requirements. Common to all three procedures is the definition of the term “teleconference,” which is defined as “a meeting of a state body, the members of which are at different locations, connected by electronic means, through either audio or both audio and video.”⁴⁴

Teleconference Meetings Pursuant to Section 11123(b)

Since 1994, the Act has allowed a state body to hold a meeting via teleconference pursuant to procedures set forth in [Section 11123\(b\)](#). [Section 11123\(b\)](#) requires compliance with each of the following requirements, in addition to all other applicable requirements of the Act:

- (1) Each teleconference location from which a member of the body attends the meeting must be identified in the notice and agenda of the meeting, and open and accessible to the public.⁴⁵
- (2) The agenda of the meeting must be posted at each teleconference location.⁴⁶
- (3) At least one member of the state body must be physically present at each

40. Gov’t Code § [11122.5\(b\)\(2\)](#).

41. Gov’t Code § [11122.5\(c\)\(2\)-\(5\)](#).

42. Gov’t Code § [11130.7](#).

43. Gov’t Code §§ [11123\(b\)](#), [11123.2](#), and [11123.5](#).

44. See Gov’t Code §§ [11123\(b\)\(2\)](#), [11123.2\(a\)\(2\)](#), [11123.5\(a\)\(3\)](#).

45. See Gov’t Code § [11123\(b\)\(1\)\(C\)](#).

46. *Id.*

teleconference location identified in the notice of the meeting.⁴⁷

- (4) All parts of the meeting other than a closed session must be audible to the public at each teleconference location.⁴⁸
- (5) Members of the public must be provided the same opportunity to directly address the state body at each teleconference location as the Act requires at a meeting of the state body not conducted via teleconference.⁴⁹
- (6) All votes must be taken by rollcall.⁵⁰

The Commission held a teleconference meeting pursuant to [Section 11123\(b\)](#) in February 2024, which required travel by Commissioners and the staff to three separate meeting locations and renting space for the meetings.⁵¹ In 2013, the staff advised the Commission that identifying each teleconference location from which a Commissioner might attend a teleconference meeting 10 days before the meeting made conducting a teleconference meeting pursuant to [Section 11123\(b\)](#) “considerably more difficult” than the Commission’s regular practice of conducting in-person meetings, which was the case with the February 2024 meeting.⁵²

Teleconference Meetings Pursuant to Section 11123.2

On September 22, 2023, the Legislature enacted [Section 11123.2](#), providing separate authority for state bodies to meet via teleconference from January 1, 2024, through December 31, 2025, pursuant to procedures distinct from those specified in [Section 11123](#).⁵³

The primary requirements for conducting a teleconference meeting pursuant to [Section 11123.2](#) differ from the requirements of [Section 11123\(b\)](#) in several respects, as under [Section 11123.2](#):

- (1) A majority of the state body members must attend the meeting at a *single* primary teleconference location,⁵⁴ from which the meeting must be audible and visible to the public,⁵⁵ and from which members of the public may participate.⁵⁶

47. See Gov’t Code § [11123\(b\)\(1\)\(F\)](#).

48. See Gov’t Code § [11123\(b\)\(1\)\(B\)](#).

49. See Gov’t Code §§ [11123\(b\)\(1\)\(C\)](#), [11125.7](#).

50. See Gov’t Code § [11123\(b\)\(1\)\(D\)](#).

51. From May 2020 through June 2023, the Commission held multiple meetings via teleconference, but for most of that period, executive orders relating to COVID-19 had suspended some of the requirements of Gov’t Code § [11123\(b\)](#).

52. See Memorandum [2013-3](#), pp. 1-2.

53. See [2023 Cal. Stat. ch. 216](#) (SB 544), § 1. The enacted section provides for its own repeal on January 1, 2026. See § [11123.2\(p\)](#).

54. Gov’t Code § [11123.2\(j\)\(1\)](#).

55. Gov’t Code § [11123.2\(c\)](#).

56. Gov’t Code § [11123.2\(a\)\(2\)](#).

- (2) However, a minority of the membership of a state body may attend the meeting from a remote location, which is *not* required to be disclosed in the notice or agenda of the meeting, nor accessible to the public.⁵⁷
- (3) Any member of the state body attending a meeting from a remote location must disclose whether any other individual 18 years of age or older is present in the room at the remote location with the member, along with the general nature of the member’s relationship with any such individual.⁵⁸
- (4) The state body must provide a means by which the public may remotely hear audio of the meeting, remotely address the body, and if video is used, remotely observe the meeting, by providing on the posted agenda a teleconference telephone number and if applicable an internet website or other online platform for the meeting, which must be equivalent to the telephonic or online means provided to a member of the state body participating in the meeting remotely.⁵⁹
- (5) During the open portion of any meeting accessible via the internet or other online platform, all members of the body attending the meeting shall appear on camera, except when the appearance would be technologically impracticable, 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.⁶⁰

The Commission has not conducted a meeting pursuant to this provision.

Teleconference Meetings Pursuant to Section 11123.5

Since January 1, 2019, a specified subset of state bodies subject to the Act — specifically, an “advisory board, advisory commission, advisory committee, advisory subcommittee, or similar multimember advisory body” — have been permitted to conduct teleconference meetings pursuant to a third section of the Act, [Section 11123.5](#).

As enacted, the chief difference between the teleconference meeting procedure authorized by [Section 11123.5](#) and the procedure available under [Section 11123\(b\)](#) was that under the [Section 11123.5](#) procedure, if the state body has a quorum of its members at a single designated location accessible to the public, the remaining members of the body could participate in the meeting from remote locations not required to be disclosed in the meeting agenda, and not required to be accessible to the public.⁶¹

57. Gov’t Code § [11123.2\(j\)\(1\)](#). The reference in this provision to “a remote location” leaves slightly unclear whether members not attending a meeting at the primary teleconference location must all attend at the *same* remote location. However, the text of the entire section read in conjunction with a legislative analysis of the enacting bill strongly suggests the intent of the Legislature was to allow members to attend the meeting from separate remote locations.

58. See Gov’t Code § [11123.2\(j\)\(4\)](#).

59. See Gov’t Code § [11123.2\(d\)\(1\)](#).

60. See Gov’t Code § [11123.2\(k\)\(1\), \(2\)](#).

61. See [2018 Cal. Stat. ch. 881](#) (AB 2958). Gov’t Code § [11123.5](#) also required the state body, if any member was participating in a meeting remotely, to provide a means by which the public could remotely hear or observe the meeting, including, if available, equal access equivalent to members of the state body participating remotely.

However, although this alternative teleconference procedure seemingly addressed the primary reason the Commission had not been conducting teleconference meetings pursuant to Section [11123\(b\)](#),⁶² it does not appear the Commission ever considered conducting a teleconference meeting pursuant to [Section 11123.5](#) following the enactment of that section.⁶³

Similarly, a Little Hoover Commission recommendation published in 2021, emphasizing the importance of allowing state bodies more flexibility in conducting teleconference meetings, advised that “[the Bagley-Keene Open Meeting Act] allows for remote, ‘teleconference’ participation by members of the board or commission, *but requires public disclosure and public accessibility for each of the remote locations*.”⁶⁴ Later, the report also noted that “Prior to the [COVID-19] pandemic, the law required public disclosure and public accessibility to every location from which a board or commission member participated.”⁶⁵

The [Section 11123.5](#) procedure, which at the time of the report had been available to *some* public bodies for nearly three years, was mentioned only once in passing, as an example of greater flexibility in allowing for remote participation by “purely advisory bodies.”⁶⁶

On September 22, 2023, the bill that enacted [Section 11123.2](#) also amended [Section 11123.5](#).⁶⁷

The overall effect of the bill was, for a period of two years, to effectively (1) make the teleconference procedure that had been available under [Section 11123.5](#) applicable to *all* state bodies under [Section 11123.2](#),⁶⁸ and (2) make the teleconference procedure under [Section 11123.5](#), for the same specified subset of state bodies significantly less restrictive than they had been.

As a result, through December 31, 2025,⁶⁹ [Section 11123.5](#) now appears to allow *all* members of the same subset of state bodies authorized to use that section’s teleconference

62. See note 52, *supra*.

63. See e.g., Memoranda [2018-42](#), [2019-43](#).

64. Little Hoover Commission, [The Government of Tomorrow: Online Meetings](#) (June 2021), p. 4 (emphasis added).

65. *Id.*, p. 9.

66. *Id.*, p. 7.

67. See [2023 Cal. Stat. ch. 216](#) § 2 (SB 544).

68. One relatively minor difference between the former Gov’t Code § [11123.5](#) procedures and the new Gov’t Code § [11123.2](#) procedures is that § [11123.5](#) required a quorum of the members of the state body to all attend at one location accessible to the public, while § [11123.2](#) requires a majority of the members to do so.

69. The bill amending Gov’t Code § [11123.5](#) automatically repeals this version of the section on January 1, 2026, and replaces it with a new version of the section that would again require the presence of a quorum of the state body at an identified meeting location. See [2023 Cal. Stat. ch. 216](#) § 3 (SB 544), Gov’t Code § [11123.5\(e\)](#).

procedure to participate in a meeting of that body from remote undisclosed locations inaccessible to the public, as long as the body identifies and provides a separate physical location, with a staff member present, from which the public can participate.⁷⁰

Further, as a meeting pursuant to any of the three teleconferencing procedures, including the [Section 11123.5](#) procedure, may be conducted through the use of only an audio connection between members of the body,⁷¹ the absence of any requirement that any member of the body attend a meeting at the same location as the general public appears to mean that a teleconference meeting under [Section 11123.5](#) may consist of simply offering the public an opportunity to listen to an audio conference, with no visual observation of any member of the public body at all.⁷²

In summary, through December 31, 2025, the primary requirements for a state body to conduct a teleconference under [Section 11123.5](#) include the following:

- (1) The state body conducting the meeting must be an “advisory board, advisory commission, advisory committee, advisory subcommittee, or similar multimember advisory body.”⁷³
- (2) The notice of the meeting must identify a primary physical location where members of the public may physically attend the meeting, “observe and hear” the meeting, and participate in the meeting.⁷⁴
- (3) An agenda for the meeting must be posted at that primary physical meeting location.⁷⁵
- (4) A staff member of the state body must be physically present at that primary physical meeting location.⁷⁶
- (5) At least 24 hours before a meeting, the state body must identify on its website, and email to any person who has requested notice of meetings, a notice identifying any member of the body who will be participating in the meeting remotely.⁷⁷
- (6) All members of the state body appear to be permitted to attend the meeting remotely, with no specification of any minimum or maximum number that may

70. See Gov’t Code § [11123.5](#). The staff’s description of the amended section reads as it does because the text of the section does not expressly state that all members of the state body may attend meetings of the body from remote locations. It simply allows a member of the body to attend from a remote location as described, and contains no requirement that any member attend a meeting from the physical location that must be provided for the public,

71. See Gov’t Code §§ [11123\(b\)\(2\)](#), [11123.2\(a\)\(1\)](#), [11123.5\(a\)\(3\)](#).

72. The text of the section appears to allow public *participation* in a meeting, beyond merely hearing and seeing, only to members of the public attending the identified physical meeting location for the meeting. See n. 80, *infra*.

73. Gov’t Code § [11123.5\(b\)](#).

74. Gov’t Code § [11123.5\(f\)](#). As indicated, the word “observe” may be misleading, as if the meeting is being conducted via permissible audio connection only, it is unclear what the public might be “observing” at such a meeting.

75. *Id.*

76. *Id.*

77. Gov’t Code § [11123.5\(d\)](#).

do so.⁷⁸

- (7) A member of a state body who participates from a remote location subject to this section's requirements must be listed in the minutes of the meeting.⁷⁹
- (8) Assuming at least one member of a state body participates in a meeting from a remote location, the state body must provide a means by which the public may remotely hear or observe the meeting, which must be equivalent to the telephonic or online means provided to a member of the state body participating in the meeting remotely.⁸⁰
- (9) Except when technologically impracticable, during the open portion of a meeting that is publicly accessible via the internet or other online platform, the members of the state body must appear on camera.⁸¹

California Constitutional Considerations

The bill adding [Section 11123.2](#) and amending [Section 11123.5](#) also expressly recognized that each of those legislative enactments imposed a limitation on the public's right of access to meetings of public bodies, within the meaning of Section 3 of Article I of the California Constitution.⁸²

That recognition triggers the requirement, as provided in that constitutional provision, that the text of both [Sections 11123.2](#) and [11123.5](#) — including the applicability provision of [Section 11123.5](#) — be narrowly construed.⁸³ In [the First Supplement to Memorandum 2023-35](#) the staff recommended against the Commission holding meetings under [Section 11123.2](#) or [Section 11123.5](#) however the Commission did not make a formal decision on the format of future meetings and instead generally agreed to use the hybrid meeting approach where commissioners could appear remotely at publicly noticed locations.⁸⁴

Prior Commission Consideration of Issue

At its February 2024 Commission meeting the Commission directed the staff to further explore the possibility of conducting Commission meetings under [Section 11123.5](#). At the Commission's May 2024 meeting, the staff presented a memorandum⁸⁵ inviting the Commission to consider whether the Commission wished to revise its Handbook to indicate that it viewed itself as an advisory body authorized to conduct

78. See Gov't Code §§ [11123.5\(c\)](#), [\(d\)](#), [\(f\)](#), [\(g\)](#).

79. Gov't Code § [11123.5\(c\)](#).

80. See Gov't Code § [11123.2\(g\)](#). The section does not appear to require the body to allow remote *participation* by members of the public, apparently mandating allowance of that participation only at the identified physical location for the meeting.

81. Gov't Code § [11123.5\(h\)](#).

82. See [2023 Ca. Stat. ch. 216](#) § 5 (SB 544). See also n. 5 and corresponding text, *supra*.

83. See [Cal. Const. art I, § 3\(b\)\(1\)-\(2\)](#).

84. Memorandum [24-11](#), p. 1.

85. Memorandum [2024-11](#).

teleconference meetings pursuant to [Section 11123.5](#). At the meeting, the Commission decided to revise its Handbook accordingly.⁸⁶

Conclusion

At its October 2024 meeting, the Commission approved its 2025 meeting schedule with the understanding that there would be five in person meetings for 2025; however if a Commissioner is unable to attend a particular meeting in person, Section 360(d) of the Handbook, together with Government Code [Section 11123.5\(d\)](#), allows a Commissioner to attend by teleconference if the Commission posts on its website 24 hours prior to the meeting that the Commissioner will be participating remotely and emails that notice to anyone requesting notice of the meeting.⁸⁷

It is the understanding of the staff that the Commission that sponsored the enactment of [Section 11123.5](#) is considering seeking legislation that would extend or eliminate the sunset on [Section 11123.5](#). The staff will keep the Commission informed on any legislation that would seek to extend or eliminate that sunset.

CONFLICT OF INTEREST PROVISIONS

Commissioners are also subject to various conflict of interest provisions.

Political Reform Act of 1974

[Section 87100](#) provides:

A public official at any level of state or local government 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.

The term “public official” includes both Commissioners and the staff of the Commission.⁸⁸

Whether a public official has a material “financial interest” in a governmental decision is a complex subject, generally addressed by [Section 87103](#).

The application of [Section 87100](#) to specific fact patterns is beyond the scope of this memorandum. However, further information concerning the Political Reform Act of 1974 is available on the website of the Fair Political Practices Commission, at www.fppc.ca.gov,

86. See Minutes ([May 2024](#)), pp. 3-4.

87. See Memoranda [2024-42](#), [2025-1](#), p. 3; California Law Revision Commission, *Handbook of Practices and Procedures* [Rule 360](#).

88. See Gov't Code §§ [82003](#), [82048](#).

or by calling the Fair Political Practices Commission at 1-866-ASK-FPPC (1-866-275-3772).

Financial Interest in Contract Made by State Agency

[Section 1090](#) prohibits officers or employees of the state and other governmental entities from being “financially interested” in any contract that is either (1) made by the officer or employee in their official capacity, or (2) made by any body or board of which they are members.

Commissioners are officers of the state for purposes of [Section 1090](#).⁸⁹

Commission Contracts

In general, the Commission makes three types of contracts — personnel contracts, facilities leases, and contracts for goods and services.

Commissioners are often directly involved in making the first two types of contracts. The Commission must approve some hiring decisions and is also asked to approve contracts with research consultants.⁹⁰

Commissioners typically have no direct involvement in making contracts for goods and services other than as indicated above, contracts for services. Nevertheless, regardless of whether a Commissioner is actually involved in making a contracting decision, there are circumstances in which such participation may be conclusively presumed. Courts have held that when a member of a board or commission has the *power* to execute a contract, the member is conclusively presumed to be involved in the making of that contract, regardless of actual participation.⁹¹

As a result, *any* contract entered into by the Commission could theoretically implicate [Section 1090](#).

Given the harsh penalties that attach to a violation of [Section 1090](#), it would be prudent for Commissioners to take a very cautious stance with regard to potential contracting conflicts. If any Commissioner has a “financial interest” (discussed more fully below) in a person or entity that might conceivably be affected by a Commission contract, the Commissioner should raise the matter with the Executive Director. For example, if a Commissioner has a “financial interest” in a company that sells office supplies or computers or that provides business services, it would be prudent to alert the Executive Director.

89. See *People v. Elliott* (1953) 115 Cal.App.2d 410, 415.

90. California Law Revision Commission, *Handbook of Practices and Procedures*, [Rules 210, 900, 905](#).

91. See *Thomson v. Call* (1985) 38 Cal.3d 633, 649-50, 699; *Fraser-Yamor Agency, Inc. v. County of Del Norte* (1977) 68 Cal.App.3d 201, 211-212.

Nature of Financial Interest

The “financial interest” referenced in [Section 1090](#) is not to be construed in a restricted and technical manner.⁹² It has also been noted that [Section 1090](#) is intended “not only to strike at actual impropriety, but also to strike at the appearance of impropriety.”⁹³ In a Supreme Court decision interpreting [Section 1090](#), the Court explained that “the defining characteristic of a prohibited financial interest is whether it has the potential to divide an official’s loyalties and compromise the undivided representation of the public interests the official is charged with protecting.”⁹⁴

Although this language is somewhat abstract, more concrete guidance can be found by examining the statutory exceptions to the meaning of “financial interest.” The most relevant of those exceptions are discussed below.

Minimal Financial Interest

[Section 1090](#) does not apply to “minimal” financial interests, as specified in [Section 1091.5](#). The types of minimal interests that are most likely to be relevant to Commissioners are as follows:

- A Commissioner’s interest in a contracting party who is a client of the Commissioner’s law firm, if (1) the Commissioner has less than a 10% ownership interest in the firm, and (2) the Commissioner has not and will not receive remuneration, consideration, or a commission as a result of the contract.⁹⁵
- A Commissioner’s interest in a for-profit corporation that is affected by the contract (even if the corporation is not the contracting party), if (1) the Commissioner owns less than three percent of the shares of the corporation, (2) the Commissioner’s total annual dividend income from the corporation, including the value of stock dividends, does not exceed five percent of the Commissioner’s annual income, and (3) any other payments to the Commissioner from the corporation do not exceed five percent of the Commissioner’s annual income.⁹⁶
- A Commissioner’s interest in reimbursement for actual and necessary expenses incurred in the performance of official duties.⁹⁷

Remote Financial Interest

[Section 1090](#) also does not apply to a “remote” financial interest, as defined in

92. *People v. Honig* (1996) 48 Cal.App.4th 289, 315.

93. *City of Imperial Beach v. Bailey* (1980) 103 Cal.App.3d 191, 197.

94. *Lexin v. Superior Court* (2010) 47 Cal.4th 1050, 1075 (internal quotations and citations omitted).

95. Gov’t Code § [1091.5\(a\)\(10\)](#).

96. Gov’t Code § [1091.5\(a\)\(1\)](#); see also *Fraser-Yamor Agency, Inc. v. County of Del Norte* (1977) 68 Cal.App.3d 201, 217.

97. Gov’t Code § [1091.5\(a\)\(2\)](#).

[Section 1091](#), but *only* if all of the following procedural requirements are satisfied:

- (1) The interest is in a contract made by a body or board of which an officer is a member (as opposed to a contract made directly by the officer).
- (2) The interest is disclosed to the body or board.
- (3) The interest is noted in the official records of the body or board.
- (4) The body or board thereafter authorizes, approves, or ratifies the contract in good faith by a vote of its membership sufficient for that purpose without counting the vote or votes of the officer with the remote interest.
- (5) The officer does not influence or attempt to influence another member of the body or board to enter into the contract.⁹⁸

“Remote” interests that are likely most relevant to Commissioners include the following:

- A Commissioner’s interest in a contracting party who is a client of the Commissioner’s law firm (regardless of the Commissioner’s ownership interest in the firm), if the Commissioner has not and will not receive remuneration, consideration, or a commission as a result of the contract.⁹⁹
- A Commissioner’s interest in a contracting party that is a for-profit corporation in which a Commissioner has an ownership interest, if (1) the Commissioner owns less than three percent of the shares of the corporation, and (2) the ownership of those shares was derived from the Commissioner’s employment with the corporation.¹⁰⁰

Inferences Based on Sections 1091 and 1091.5

Because [Sections 1091](#) and [1091.5](#) establish exceptions for certain types of financial interests, so long as the interests are sufficiently “minimal” or “remote,” one can infer that those same types of interests *would* violate [Section 1090](#), if they do not meet the de minimis or remoteness standards specified in [Sections 1091](#) or [1091.5](#).¹⁰¹

For example, if a Commissioner owns more than a “minimal” percentage of a for-profit corporation, that ownership interest is probably a “financial interest” for the purposes of [Section 1090](#).¹⁰²

98. Gov’t Code § [1091\(a\), \(c\)](#).

99. Gov’t Code § [1091\(b\)\(6\)](#).

100. Gov’t Code § [1091\(b\)\(14\)](#).

101. See *People v. Honig* (1996) 48 Cal.App.4th 289, 317 (“[A] significant indication of legislative intent with respect to the scope of Section 1090 can be derived by reference to [Sections 1091](#) and [1091.5](#)”); Office of the Attorney General, *Conflicts of Interest* 62 (2010) (exceptions provided in [Sections 1091](#) and [1091.5](#) should be consulted for guidance to determine what falls within the scope of the term “financial interest” as used in [Section 1090](#)).

102. See, e.g., *Fraser-Yamor Agency, Inc. v. County of Del Norte* (1977) 68 Cal.App.3d 201, 218 (county supervisor’s 40% ownership of insurance broker exceeded allowed percentage specified in Gov’t Code § 1091.5(a)(1), resulted in finding “as a matter of law” that supervisor had financial interest in insurance contract for purposes of Gov’t Code § [1090](#)).

Severe Consequences for Violation

A contract made in violation of any of the provisions of [Section 1090](#) may be avoided by any party to the contract except the interested officer.¹⁰³

In addition, the law provides for severe penalties for the interested officer or employee, or for aiding or abetting a person subject to those sections in violating the section.¹⁰⁴

An officer or employee who is found to have willfully violated [Section 1090](#) is punishable by a fine or imprisonment in state prison, and permanent disqualification from the holding of any state office.¹⁰⁵ The term “willful” has been defined to mean that the officer or employee knows of “a reasonable likelihood that the contract may result in a personal financial benefit” to the officer or employee.¹⁰⁶

A non-willful violation of the section may also result in civil consequences, depending on the circumstances presented.¹⁰⁷

Other Financial Relationship with State

Under Public Contract Code [Section 10410](#), appointed officials and employees of the state are prohibited from engaging in outside employment or other activity 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.

[Section 10410](#) 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 section provides in full:

10410. No officer or employee in the state civil service or other appointed state official shall engage in any employment, activity, or enterprise from which the officer or employee receives compensation or in which the officer or employee has a financial interest and which is sponsored or funded, or sponsored and funded, by any state agency or department through or by a state contract unless the employment, activity, or enterprise is required as a condition of the officer’s or employee’s regular state employment. No officer or employee in the state civil service shall contract on his or her own individual behalf as an independent contractor with any state agency to provide services or goods.

The precise application of this section is somewhat unclear, as it appears the section has yet to be construed in any reported appellate opinion. Two advisory opinions from the

103. Gov’t Code § [1092](#).

104. See Gov’t Code § [1097](#).

105. Gov’t Code § [1097](#).

106. See *People v. Honig* (1996) 48 Cal.App.4th 289, 338.

107. See *Thomson v. Call* (1985) 38 Cal.3d 633, 699 P.2d 316.

Attorney General's office have addressed peripheral aspects of the section.¹⁰⁸

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. A limited exception is provided for the continuation of an attorney's services on a matter in which the attorney was involved prior to leaving state service.

Violation of either provision renders the contract at issue void, unless the violation is "technical or nonsubstantive."¹⁰⁹ A violation can also subject the state official or employee to civil and criminal sanctions.¹¹⁰

Common Law Doctrine Against Conflicts of Interest

Independent of statutory conflict of interest provisions, there also exists a long-standing common law doctrine against conflicts of interest that is likely applicable to Commissioners. Although this doctrine has rarely been cited in recent appellate opinions, the Attorney General's office advises that the doctrine remains viable.¹¹¹

This court-made doctrine extends to both economic and noneconomic conflicts of interest. It provides that "[a] public officer is impliedly bound to exercise the powers conferred on him with disinterested skill, zeal, and diligence and primarily for the benefit of the public...."¹¹²

Alternatively stated, the doctrine 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."¹¹³

108. See 88 Ops. Cal. Atty. Gen. 56 (2005) (financial grant from state does not violate section); 84 Ops. Cal. Atty. Gen. 131 (2001) (no violation of Gov't Code § [10410](#) based on spouse of state employee contracting with state, if employee does not participate in making of contract or in the spouse's business).

109. Pub. Cont. Code § [10420](#).

110. Pub. Cont. Code §§ [10421-10425](#).

111. 67 Ops. Cal. Att'y Gen. 369, 381 (1984).

112. *Clark v. City of Hermosa Beach* (1996) 48 Cal.App.4th 1152, 1170.

113. 70 Ops. Cal. Att'y Gen. 45, 47 (1987).

CALIFORNIA PUBLIC RECORDS ACT¹¹⁴

As a state agency, the Commission is subject to the California Public Records Act (hereafter, “CPRA”).¹¹⁵ As a result, members of the public are generally entitled to inspect and copy Commission records, to the extent and in the manner provided by the CPRA. The Commission rarely receives public record requests, but when it does, the staff handles them administratively. In addition, as a matter of voluntary practice, the Commission posts all of its staff memoranda, reports, and recommendations on its website, www.clrc.ca.gov, where all documents are available for download.

If a Commissioner or member of the staff uses a personal electronic communication account to conduct Commission business, those writings may be subject to disclosure under the CPRA.¹¹⁶ To minimize the difficulties presented by that rule, the Commission adopted the following policy to regulate its own use of electronic communications for Commission business:

Electronic communications

(a) Commissioners and members of the staff shall not use text messaging or social media to send or receive a message that relates to the conduct of the Commission’s business.

(b) Members of the staff should only use an official account to send or receive email messages that relate to the conduct of the Commission’s business. In the event that a staff member uses a personal account for such a purpose, the staff member shall forward a copy of the message to an official account.

(c) If a Commissioner uses a personal account to send or receive an email message that relates to the conduct of the Commission’s business, the Commissioner shall store the message in a location that is used exclusively for that purpose. When a Commissioner’s term of service ends, the Commissioner shall forward all such messages to the Executive Director for retention.

(d) For the purposes of this section, “official account” means an email account within the domain “clrc.ca.gov.” “Personal account” means any email account that is not an official account.

(e) The Commission’s annual memorandum discussing “Open Government Laws” shall reiterate these practices.¹¹⁷

114. Gov’t Code §§ [7920.000-7930.200](#).

115. Gov’t Code §§ [7920.530](#), [7920.540](#).

116. *City of San Jose v. Superior Court* (2017) 2 Cal.5th 608.

117. California Law Revision Commission, Handbook of Practices and Procedures, [Rule 380](#).

Respectfully submitted,

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