

A Guide to Bagley-Keene (and other Government Stuff)

California Complete Count Committee
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Why We're Here

- Governor Brown created the California Complete Count Committee by executive order on April 13, 2018
- The Committee is advisory. Although no binding decisions are made, your role is very important.
- All State boards and commissions, including the California Complete Count Committee, must comply with the Bagley-Keene Open Meeting Act (Act).



Purpose

- Openness and Transparency in Transacting Business
 - Californians do not yield their sovereignty to the agencies that serve them; they insist on remaining informed. (Gov't Code, § 11120.)
- The Act Grants Rights to the Public:
 - Right to attend and record (without being disruptive).
 - Right to comment on Committee actions.
 - Right to copy and inspect records.

The Seat for the Public



- The Bagley-Keene Open Meeting Act (Act) implements a provision of the California Constitution which declares that “**the meetings of public bodies and the writings of public officials and agencies shall be open to public scrutiny,**” and explicitly mandates open meetings for California State agencies, boards, and commissions. The Act facilitates accountability and transparency of government activities and protects the rights of citizens to participate in state government deliberations.



Meetings

- Definition of a Meeting: “Includes 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.”
- When a quorum of the Committee meet, either “serially” (to be covered in another slide) or all together, in one place, at the same time, to address issues under the Committee’s subject matter.
- Meetings of a body’s committees and subcommittees also need to be noticed and open to the public (these include working groups), unless there are less than 3 persons meeting. Working group less than 3 persons without any delegated authority okay to meet without a notice.



Meeting Exemptions

- Certain situations where a majority of the members are present but do not discuss the body's business.
- Individual contacts or conversations between a Committee member and any other person (i.e. California Complete Count Committee Staff).
- Attendance of a majority of members at a conference or similar gathering open to the public that involves a discussion of issues of general interest to the public
- Attendance by a majority of members at an open and noticed meeting of another state body or of a legislative body of a local agency.
- Attendance by a majority of members at a purely social or ceremonial occasion.



Notice Requirements

- Posted at least 10 days prior to the meeting and provided to any person who requests it.
- Sets forth the time and location of the meeting, as well a contact person in the event more information is needed.
- Locations, even teleconference locations, must be specified and these locations must be accessible to the public and ADA-compliant.



The Rule of Three

- Note: Noticing requirements **do not** apply if a committee or subcommittee consists of **less than three persons**.
- It is the number of persons on the committee or subcommittee that is determinative, not how many are committee members.



Agenda

- As with the Notice, must be posted at least 10 days prior.
- Brief but specific description of all items of business to be considered or discussed.
- Not a generalization like “Other Things of Interest to the Committee” or “Things That Might Come Up.”
- No generalizations like “Old or New Business.”



Disclosure of Documents

- When writings are distributed to a majority of the members of a body for discussion or consideration, the writings must be made available for public inspection.
- Exception: Records exempt from disclosure under the Public Records Act need not be disclosed.



Open Session

- Business conducted in open session unless closed session authorized by law
- Some reasons for closed session:
 - Matters under the Administrative Procedure Act
 - Matters Affecting Individual Privacy



Communications

- Committee deliberations occur and decisions are made at Committee meetings.
 - Can't use serial or "hub-and-spoke" communication methodologies to discuss, deliberate or take action on Committee business.
 - The Bagley-Keene Open Meeting Act permits contacts or communications between a member of a state body and any other person, provided that such communications are not part of the prohibited type specified above.
 - Includes technological advances – texting, e-mail.



Remedies/Penalties for Act Violations

- The decision or action of the body may be overturned.
- Costs and fees may be awarded.
- Criminal misdemeanor penalties could be imposed.

Nuts and Bolts of a Meeting (Handbook Excerpt)

Meeting Schedule

The Committee shall meet no less than quarterly each year. Additional meetings, including working groups, may be added per the Chair's discretion. Attendance at all Committee meetings is expected.



Quorum

Fifty percent of the membership, plus one member, shall constitute a quorum for the Committee. The presence of the Chair shall count in the determination of a quorum. The CA Census 2020 staff are the liaisons to the Complete Count Committee members. CA Census 2020 staff will conduct roll call at the direction of the Chair to establish quorum at each meeting and shall facilitate the roll call for any actions that require a vote.



Role of Committee Staff

- California Census 2020 staff are the liaisons to the Complete Count Committee members.
- Role -call
- Staff will capture Committee's recommendations and activities in meeting minutes, summarizing the discussion and key outcomes of the meeting.
- Members will review and approve the previous meeting's highlights at the beginning of the following meeting.



Motions

- When an action is to be considered, a Committee member should make a motion to propose a decision or course of action. The Chair may also invite a motion.
- Upon making a motion, Committee members are encouraged to speak slowly and clearly as the motion is being voice and/or video recorded.



Motions (con't)

- An agenda item has been thoroughly discussed and reviewed. (Note: At the advice of the Chair, a motion can be called before discussion.)
- The Chair opens a forum for a Committee member to make a motion to adopt, modify, or reject the discussed item.
- A Committee member makes a motion to the committee.
- A different Committee member seconds this motion.
- The Chair solicits additional comment from Committee members.
- The Chair solicits comment from the public.
- The Chair puts forth the motion to a vote.
- The vote of each Committee member shall be recorded via roll call vote.
- Upon completion of the voting, the Chair will announce the result of the vote (e.g. “the ayes have it and the motion is adopted” or “the no’s have it and the motion fails”).

Form 700/Gifts

- What is the Form 700?
- What are gifts?
- Limit is \$470 (under \$49 non reportable)
- Exceptions
 - Informational material
 - Gifts from non-profits 501(c)(3)
 - Meals (maybe)
 - Long-standing friendships



GOOD NEWS! This Committee is Advisory! No Form 700 requirement.



Conflicts of Interest

- Under the Act, a public official has a disqualifying conflict of interest in a governmental decision if it is foreseeable that the decision will have a **financial impact on his or her personal finances or other financial interests**. In such cases, there is a risk of biased decision-making that could sacrifice the public's interest in favor of the official's private financial interests. To avoid actual bias or **the appearance of possible improprieties**, the public official is prohibited from participating in the decision.

Disqualifying Financial Interests

- There are five types of interests that may result in disqualification:
- **Business Entity.** A business entity in which the official has an investment of \$2,000 or more in which he or she is a director, officer, partner, trustee, employee, or manager.
- **Real Property.** Real property in which the official has an interest of \$2,000 or more including leaseholds. (However, month-to-month leases are not considered real property interests.)
- **Income.** An individual or an entity from whom the official has received income or promised income aggregating to \$500 or more in the previous 12 months, including the official's community property interest in the income of his or her spouse or registered domestic partner.
- **Gifts.** An individual or an entity from whom the official has received gifts aggregating to \$470 or more in the previous 12 months.
- **Personal Finances.** The official's personal finances including his or her expenses, income, assets, or liabilities, as well as those of his or her immediate family.

Public Record Act

(Gov't Code § 6250 et. sec)

- The fundamental goal of the California Public Records Act is that governmental records shall be disclosed to the public, upon request, unless there is a specific reason not to do so.
- The Legislature declared that access to information concerning the conduct of the public's business is a fundamental and necessary right for every person in the State.
- Cases interpreting the Act also have emphasized that its primary purpose is to give the public an opportunity to monitor the functioning of their government.

What is a “record”



- A public record is any **writing** containing information relating to the conduct of the public’s business prepared, owned, used or retained by a governmental agency (i.e., this Committee) regardless of physical form.
- “**Writing**” means handwriting, typing, printing, photocopying, email, fax or other records, including pictures, sounds or symbols in a manner in which a record has been stored.
- No duty to create a record



Public Records Act (con't)

- This Committee is subject to the Act.
- The public can ask for records either in writing or verbally.
- Required to respond within 10 calendar days.
- Unless an exemption exists, the Committee is required to produce the records.
- Materials distributed to the Committee are subject to the Act.



Exemptions

- Individual's right to privacy (e.g., privacy in certain personnel, medical or similar records).
- Government's need to perform its assigned functions in a reasonably efficient manner (e.g., maintaining confidentiality of investigative records, official information, records related to pending litigation, and preliminary notes or memoranda, balancing test).



The End

- Questions?
- Comments?