



Air Resources Board



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Edmund G. Brown Jr.
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TO: Members of the Low Carbon Fuel Standard Advisory Panel

FROM: Steve Adams *sa*
Senior Staff Counsel

DATE: April 25, 2014

SUBJECT: Obligations Under the California Open Meeting Laws

Congratulations on your selection to the Low Carbon Fuel Standard Advisory Panel (Panel). This memorandum is to let you know about the open meeting laws that apply to the Panel. California's open meeting laws require most state and local bodies to conduct their meetings in public unless specifically authorized to meet in closed session. These laws apply to advisory bodies such as the Panel. This means that the Panel must conduct all meetings in public and meet various other requirements that are described below.

The specific open-meeting law that applies to the Panel and other "state bodies" is called the Bagley-Keene Act. It is similar to the Brown Act, which applies to local legislative bodies such as the governing boards of cities, counties, and school districts. Both the Brown Act and the Bagley-Keene Act reflect a basic value judgment by the Legislature: that members of the public should be allowed an opportunity to monitor and participate in the decision-making process. The public's ability to participate would be compromised if state bodies were allowed to meet in secret. When the goal of greater public involvement is kept in mind, it may be easier to understand the sometimes demanding restrictions that are imposed by California's open meeting laws.

We recommend that you refer to "A Handy Guide to the Bagley-Keene Open Meeting Act 2004" (Guide), which is published by the California Attorney General's Office and available on line at http://ag.ca.gov/publications/bagleykeene2004_ada.pdf. It contains an introductory discussion of the Bagley-Keene Act (Act) followed by the text of the Act itself. Although the Guide is dated 2004, the Act has not changed significantly since 2004, and the introductory discussion is up to date.

As mentioned above, the Act requires that all "meetings" of the Panel must be open to the public (see the section entitled "Advisory Bodies" on page 3 of the Guide). In general, a meeting occurs when a quorum of the body meets in one place to address issues under the body's jurisdiction. The general rule under Roberts Rules of Order is

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that a quorum consists of a majority (i.e., more than half) of the current membership of a group. So any gathering to discuss Panel business would be an illegal meeting if more than half of the Panel members (or alternates) are present at the meeting, unless in compliance with the provisions of the Bagley-Keene Act. A gathering of fewer members does not constitute a "meeting" under the Act because a quorum is not present.

However, it is important to realize that the term "meeting" also covers situations that you might ordinarily not think of as a "meeting." The Act also prohibits what are known as "serial meetings." I advise you to carefully read pages 5 and 6 of the Guide, which explains the types of situations that constitute a serial meeting. For example, a serial meeting would occur if one member of the Panel makes separate phone calls to a majority of the other Panel members to develop a collective concurrence about what action the Panel should take on a particular issue. In open meeting parlance, the member who initiated the communications would be acting as the "hub of the wheel" by communicating with the other members (the "spokes" of the wheel) to conduct a serial meeting with a quorum. In this situation, a serial meeting has occurred even though none of the members were physically present in the same place at the same time and no more than two Panel members ever participated in an individual conversation about the issue.

A serial meeting can also occur by an exchange of emails between a quorum of Panel members. Like face-to-face meetings or telephone conversations, email contacts with a quorum would be an improper serial meeting if the emails are used to develop a "collective concurrence" concerning action to be taken by the Panel. Emails not used to develop a collective concurrence are okay. You should be aware, however, that the Attorney General's staff has broadly interpreted the phrase "collective concurrence" to include any substantive discussions "which advance or clarify a member's understanding of an issue or facilitate an agreement or compromise among members or advance the ultimate resolution of an issue."

Exchanging emails on any subject is permissible if less than a quorum participates in the exchange or is copied. So a subgroup consisting of less than half could be formed, and email communications between the subgroup members would be permissible. Problems can arise, however, because it is very easy for email recipients to forward emails to other Panel members, who then send the emails to still other members, until eventually a quorum of members has improperly engaged in a serial meeting to discuss an issue via email. Therefore, I recommend that Panel members be very careful when communicating by email to other members. The safest approach is to avoid substantive communications and confine emails to logistical issues such as possible dates and locations of future meetings.

Following are two additional open meeting requirements that you should be aware of:

- A public notice and meeting agenda must be prepared and made available to the public at least 10 days before each meeting (see pages 7 and 8 of the Guide). ARB staff will send out the notice and the agenda.
- Members of the public must be allowed to attend all meetings and must be given an opportunity to address the Panel on each agenda item before or during the Panel's discussion of the item. Pages 9 and 10 of the Guide summarize the rights of the public to participate in meetings.

The Act contains many other provisions besides the ones mentioned above. These provisions are described in the Guide. In addition, ARB staff will be available to advise you on open meeting requirements as situations arise in the future.

I hope that your service on the Panel is a rewarding experience. If you have any questions on this memorandum, please feel free to call Senior Staff Counsel Steve Adams at (916) 327-5986.

