

# Bagley-Keene Open Meeting Act and Its Requirements for the Committee

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# Purpose of the Act

To allow members of the public to attend and participate as fully as possible in a state body's decision-making processes.

(Gov. Code section 11120; 103 Ops.Cal.Atty.Gen. 42)

# Applicability to the DxF Stakeholder Advisory Committee

The Act applies to “state bodies,” such as “state board, or commission, or similar multimember body of the state that is created by statute...” (Gov. Code section 11121(a)).

- DxF Advisory Committee is created by Health & Safety Code section 130290.

**Committees:** The Act also applies to any advisory committee the creates if the committee consists of 3 or more persons (Gov. Code section 11121(c)).

# The Act Applies to “Meetings”

Every “meeting” is subject to the Act’s requirements.

**“Meeting” Definition:** A **quorum** of the Committee convening, at the same time and place, to hear, discuss, or deliberate on any item within the subject matter of the Committee.

- A **“quorum”** is the minimum number of members who must be present for the Committee to transact business and California law generally states that a quorum is a majority of members. (94 Ops.Cal.Atty.Gen. 100.)
- Only voting members are counted toward quorum.
- For the full Committee, quorum is 9 appointed/voting members (out of 17).

(Gov. Code section 11122.5(a))

# Physical Presence/Location Requirements

**Normally**, the Act requires the physical presence of members at meetings and a physical location where the public may attend. The Act allows some teleconferencing, but still requires physical presence and location.

**Through January 1, 2030**, the legislature has provided for remote participation. (Gov. Code sections 11123.2, 11123.5.)

- The Committee must still comply with the notice and public participation requirements of the Act.
- Statute urges state bodies to adhere as closely to the Act as possible to “maximize transparency and provide the public access to meetings.”

# Remote Location Requirements

- Advisory bodies which do not make decisions, such as the Committee, may utilize teleconferencing so long as all other requirements of the Act are met. (Gov. Code section 11123.5(b).)
- The Committee must publicly list all members attending remotely at least 24 hours before the meeting. Members attending remotely will be listed in the meeting minutes (Gov. Code section 11123.5(c) and (d).)
- Members must have their cameras on unless appearance is technologically impracticable. If there are internet connectivity issues, members should announce the reason for nonappearance when they turn off their camera. (Gov. Code section 11123.5(h).)

# Serial Communications Are Prohibited

- A quorum of members cannot, outside of a properly noticed “meeting”,
  - communicate in a series of communications of any kind,
  - directly or through intermediaries,
  - regarding items within the subject matter of the Committee.

**Purpose:** to prevent deliberations/actions/decisions being made in secret, without public knowledge or participation.

(Gov. Code section 11122.5(b))

# “Meeting” Exceptions

- The Act does not consider the following to be “meetings”:
  - **Public Contacts:** a member of the public contacting a quorum of members if members do not solicit such contacts.
  - **Social Gatherings:** a quorum of the members may attend a purely social event, if they do not discuss Committee issues among themselves.
  - **Conferences:** Conferences are exempt as long as they are open to the public and involve subject matter of general interest, and a quorum of members do not discuss Committee issues among themselves, other than as part of the scheduled program.

(Gov. Code section 11122.5(c))

# Meeting Notices and Agendas

The Committee must post meeting notices on the internet at least **10 days** before a meeting.

Notices must have:

- Time and place(s) of the meeting.
  - For virtual meetings, the notice must have “the means by which members of the public may observe the meeting and offer public comment”
- A **specific agenda** for the meeting that contains a brief description of all items to be discussed/transacted at the meeting.
  - The description should provide enough information to allow the public to understand what issues will be discussed or considered.
  - Generally, if an issue is not on the agenda, the Committee cannot consider it. However, a new issue can be mentioned for the purpose of including it at a future meeting.

The 10-day notice requirement does not apply for “emergency” or “special” meetings as defined under statute.

(Gov. Code sections 11125 and 11133)

# Public Attendance and Participation

Generally, meetings must be **open and public**.

- Conditions on public attendance at the meeting cannot be imposed. An individual is not required to identify themselves or to sign-in to attend.

**Public Participation:** The Committee must give the public an opportunity to directly address the Committee on each agenda item before or during the Committee's discussion or consideration of the item.

- Public criticism of the Committee cannot be prohibited.

**Broadcasting/Recording of Meetings:** Members of the public are allowed to record and broadcast meetings.

(Gov. Code sections 11123, 11124, 11124.1, and 11125.7)

# Closed Sessions

“Closed sessions” are parts of meetings without the public and are allowed only for specific statutorily-stated reasons, e.g., to discuss pending litigation or to discuss employment issues.

These sessions have to be included on the agenda and the specific statutory authority allowing the closed sessions must be stated.

(Gov. Code section 11126)

# Meeting Documents

Generally, materials distributed to the Committee prior to or during a meeting are disclosable public records.

- Some materials can be held confidential pursuant to certain sections of the California Public Records Act.
- Materials prepared by Committee members or staff are required to be available to the public at the meeting.
- Materials prepared by others are required to be available to the public after the meeting.

(Gov. Code section 11125.1)

# Voting

- The vote or abstention of each member must be publicly reported. (Gov. Code section 11123(c).)
  - If a virtual meeting, votes must be taken by rollcall. (Gov. Code sections 11123(b) and 11123.5(e).)
- Vote by secret ballot at a meeting is not allowed. (68 Ops.Cal.Atty.Gen. 65.)
- Vote by proxy is not authorized. (68 Ops.Cal.Atty.Gen. 65.)

# Abstentions

- Abstentions may complicate voting.
- In general, a state body cannot act without support of at least a majority of its quorum. For the full Committee, this is at least 9 members.
- Members who voluntarily abstain are counted toward a quorum, but decisions will only require the majority of those members who actually vote as long as there is support from a majority of the quorum.
- Members who are disqualified from voting by law are not counted toward a quorum.

(94 Ops.Cal.Atty.Gen. 100.)

# Penalties for Non-Compliance

- **Civil:**

- Any interested person, the Attorney General, or a district attorney can commence court action to stop or prevent violations of the Act. (Gov. Code section 11130.)
- Any interested person can also commence court action to declare a Committee action taken in violation of the Act's notice, agenda, and public attendance requirements as "null and void." (Gov. Code section 11130.3.)
- If successful, a plaintiff can obtain a court order, court costs, and attorneys' fees. (Gov. Code section 11130.5.)

- **Criminal:**

- It is also a misdemeanor for any member to attend a meeting in violation of the act and where the member "intends to deprive the public of information to which the member knows... the public is entitled." (Gov. Code section 11130.7.)