

## MEMORANDUM 2025-13

### Bagley-Keene Open Meeting Act

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The Commission<sup>1</sup> has long maintained a *Handbook of Practices and Procedures* (Handbook) to memorialize its decisions about how it operates.<sup>2</sup> At its May 2024 meeting, the Commission concluded that it views itself as an advisory body<sup>3</sup> for the purposes of the teleconferencing authority provided by [Government Code Section 11123.5](#) and directed the staff to propose implementing Handbook language which the Commission subsequently adopted.<sup>4</sup> The authority for advisory bodies to meet under that section will be repealed on January 1, 2026. This memorandum discusses a bill that will extend that authority indefinitely.

At the January 2025 Commission meeting, several Commissioners raised questions about Commissioner communication with individual stakeholders outside of public meetings. This memorandum refers the Commission to [Memorandum 2024-22](#), which provides background on this topic and identifies relevant language in the Handbook.

#### PENDING LEGISLATION ON TELECONFERENCE MEETINGS

In June 2024, the Commission approved<sup>5</sup> a revision to its Handbook relating to a 2023 amendment to the Bagley-Keene Open Meeting Act<sup>6</sup> authorizing a new way for the Commission to conduct meetings via teleconference.<sup>7</sup>

Section 360 of the Handbook was revised to reflect that authority:

#### **360. Teleconference meetings**

(a) The Commission views itself as an advisory body for the purposes of the teleconferencing authority provided by Government Code Section [11123.5](#). The

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<sup>1</sup> 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](http://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.

<sup>2</sup> See, e.g., Memorandum [1969-145](#).

<sup>3</sup> Minutes ([May 2024](#)), pp. 3-4.

<sup>4</sup> Memorandum [2024-22](#), Minutes ([June 2024](#)), pp. 3-4.

<sup>5</sup> Minutes ([June 2024](#)), pp. 3-4.

<sup>6</sup> Gov't Code § [11123.5](#), as amended by [2023 Cal. Stat. ch. 216](#), § 2 (SB 544).

<sup>7</sup> Memorandum [2024-22](#).

Commission reserves the right to meet via teleconference as the Commission deems appropriate and in conformance with the requirements of the Bagley-Keene Open Meeting Act.<sup>8</sup>

(b) The staff will consult with the Commission to determine whether particular meetings should be conducted in person or via teleconference.

(c) The Commission may meet in person to host expert speakers and receive stakeholder comments. The Commission may use the teleconference option for routine meetings and when Commissioners are unavailable to meet in person and a quorum can otherwise not occur.

(d) Commissioners may attend in-person Commission meetings via teleconference when Commissioners are unable to attend in person. Commissioners should notify staff at least two days in advance of the meeting to comply with the public notice requirement in Government Code Section [11123.5\(d\)](#).<sup>9</sup>

As indicated in the Handbook, the authority for subdivision (d) of Section 360 will be repealed on January 1, 2026.

In February 2025, [Senate Bill 470](#) (Laird) was introduced to, among other things, eliminate the repeal of Section 11123.5 and, if enacted, the authority would exist indefinitely.

## COMMISSIONER COMMUNICATIONS WITH STAKEHOLDERS

[Memorandum 2024-22](#) discusses the rules governing communications with stakeholders outside of Commission meetings (also known as “ex parte communications”):

Nothing in the Commission’s originating statutes<sup>10</sup> places restrictions on these exchanges, nor does the Bagley-Keene Open Meeting Act,<sup>11</sup> which governs Commission meetings. However, Commissioners must take care to avoid serial meetings, which are defined as “a series of communications of any kind, directly or through intermediaries, [by which a majority of Commission members] discuss, deliberate, or take action on any item of business that is within the subject matter of the [Commission].”<sup>12</sup> This restriction extends to all forms of communication, whether face-to-face or by email, to prevent circumventing open meeting

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<sup>8</sup> Minutes ([May 2024](#)). See also Gov’t Code § [11123.5](#), as amended by [2023 Cal. Stat. ch. 216](#), § 2 (SB 544) (this section expires on January 1, 2026).

<sup>9</sup> Gov’t Code § [11123.5\(d\)](#) states “[t]he state body shall provide notice to the public at least 24 hours before the meeting that identifies any member who will participate remotely by posting the notice on its internet website and by emailing notice to any person who has requested notice of meetings of the state body under this article. The location of a member of a state body who will participate remotely is not required to be disclosed in the public notice or email and need not be accessible to the public. The notice of the meeting shall also identify the primary physical meeting location designated pursuant to subdivision (f).”

<sup>10</sup> Gov’t Code §§ [8280 – 8298](#).

<sup>11</sup> Gov’t Code §§ [11120 – 11132](#).

<sup>12</sup> Gov’t Code § [11122.5\(b\)\(1\)](#).

requirements.<sup>13</sup>

That memorandum provides further guidance on the issue.

[Memorandum 24-22](#) notes individual conversations between Commissioners and stakeholders can be problematic when those conversations cumulatively amount to deliberation by a majority of the Commission. Given that admonition, each individual Commissioner can use their discretion in deciding whether to meet with interested parties outside of the Commission’s public forums regarding issues before the Commission.

Further, Handbook Section 375 provides the following guidance to Commissioners about communications outside public meetings:

**375. Communication to individual Commissioner**

(a) If the staff receives a written communication addressed to the Chairperson or to an individual Commissioner regarding a Commission study, the staff will treat the communication in the same manner as a communication to the Commission as a whole. If the communication relates to a topic under study, it will be treated in the same way as any other public comment on a study. If the communication relates to other business of the Commission, the staff will normally respond to the communication.

(b) If the Chairperson or an individual Commissioner receives a written or oral communication from an interested person regarding a Commission study, it is recommended that the Chairperson or individual Commissioner inform the staff of the substance of the communication and, if possible, provide a copy of the communication to the staff.

(c) Email to Commissioners should be sent to [the [commission staff](#)], where it will be treated like any other communication to the Commission.

Respectfully submitted,

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Executive Director

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<sup>13</sup> Office of the Attorney General, California Department of Justice, [Bagley-Keene Open Meeting Act Guide](#) (2024), pp. 6 – 8.