

MEMORANDUM 2026-6

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 2026. Consistent with past memoranda, the memorandum discusses open meeting, conflict of interest, and public records laws relating to Commission activities. Much of the discussion repeats material presented in Memorandum [2025-3](#).

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

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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.

BAGLEY-KEENE OPEN MEETING ACT

The Bagley-Keene Open Meeting Act (“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 As noted in the Commission’s *Handbook of Practices and Procedures (Handbook)*, Commission meetings are open to the public and subject to the Bagley-Keene Open Meeting Act.⁶ Any person may attend as an observer and may address the Commission or participate in the discussion as authorized by the Chair.⁷

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

Defined terms

An understanding of two terms is important to understanding the Act as a whole:

“State Body”

The specific provisions of the Act apply to “state bodies,” as defined.⁸ Pursuant to that definition, the Commission is a state body.⁹

“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.”¹⁰

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

³ §§ [11120-11132](#).

⁴ § [11120](#).

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

⁶ California Law Revision Commission, *Handbook of Practices and Procedures* § 350.

⁷ *Id.*

⁸ § [11121](#).

⁹ §§ [11121\(a\)](#), [8280](#).

¹⁰ § [11122.5\(a\)](#).

prior to the meeting, at least 10 days in advance of the meeting.¹¹

A 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.¹²

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.¹³

Description of Agenda Items

The law provides that a brief description of an item in a meeting agenda “generally need not exceed 20 words.”¹⁴ The California Department of Justice’s 2026 Bagley-Keene Open Meeting Act Guide (DOJ Guide) further advises that each description “must give the average person enough information to decide whether to attend or participate in the meeting.”¹⁵ The DOJ Guide also 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.¹⁶

Adding Items to Agenda After Agenda Publication

The Act additionally prohibits adding items to the agenda after providing notice of a meeting, including a specific agenda for the meeting, unless expressly permitted by the Act.¹⁷ Two exceptions to this are items considered at an emergency meeting¹⁸ or items requiring immediate action that came to the body’s attention less than 10 days before the meeting.¹⁹

Conduct of Meeting

The Act generally requires that all state body meetings be open and public, and that all

¹¹ § [11125\(a\)](#).

¹² *Id.*

¹³ § [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.*

¹⁴ *Id.*

¹⁵ California Department of Justice, [Bagley-Keene Open Meeting Act Guide](#) (2026), p. 13-14, citing [67 Ops. Cal.Att'y Gen. 84, 88](#) (1984).

¹⁶ *Id.*

¹⁷ § [11125\(b\)](#).

¹⁸ §§ [11125.3\(a\)\(1\)](#), [11125.5](#).

¹⁹ § [11125.3\(a\)\(2\)](#).

members of the public be permitted to attend such meetings.²⁰

Meetings are also subject to the following more specific provisions.

Public Participation

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.”²¹

Accessibility

Meetings governed by the Act must comply with Section 202 of the Americans with Disabilities Act of 1990²² and its implementing regulations.²³ Section 202 provides generally that individuals with disabilities may not be excluded from participating in the activities of a public entity, or be discriminated against by any such entity because of their disability.

Anonymous and Unconditional Attendance

No member of the public seeking to attend a meeting governed by the Act shall be required to register their name, provide other information, or otherwise fulfill any condition precedent to their attendance.²⁴ 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.²⁵

If attendance at a meeting via teleconference requires an attendee to submit “log on” information, an attendee must be permitted to use a pseudonym or other anonymous information to attend the meeting.²⁶

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.²⁷

Commission meetings conducted via teleconference are recorded and posted on the

²⁰ § [11123\(a\)](#).

²¹ § [11125.7\(a\)](#).

²² [42 U.S.C. § 12132](#).

²³ § [11123.1](#).

²⁴ § [11124\(a\)](#).

²⁵ § [11124\(b\)](#).

²⁶ § [11124\(c\)](#).

²⁷ § [11124.1\(a\)](#).

Commission website.²⁸

Disclosable Documents

The meeting agenda and any other writings distributed to a majority of the members of a state body in connection with a 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.²⁹

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.³⁰ If prepared by some other person, the writings must be made available after the meeting.³¹

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.³²

An “action taken,” for purposes of the Act, means “a collective decision made by the 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.”³³

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.³⁴

Because of this approach, it is critical that Commissioners expressly state when they oppose or abstain from approving an 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 including pending litigation, proposed legislation, disciplinary action, or the lease of real property.³⁵ To hold such a meeting, the

²⁸ www.clrc.ca.gov

²⁹ § [11125.1\(a\)](#).

³⁰ § [11125.1\(b\)](#).

³¹ *Id.*

³² § [11123\(c\)](#).

³³ § [11122](#).

³⁴ California Law Revision Commission, *Handbook of Practices and Procedures* § [510\(b\)](#).

³⁵ § [11125.4\(a\)\(1\)-\(9\)](#).

state body must make one of the following findings at the commencement of the meeting 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.³⁶

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.³⁷

Adjournment

The state body may adjourn any meeting to another place and time or continue the meeting to another time, if notice of the adjournment or continuance is provided.³⁸

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\(b\)\(1\)](#) 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 to includes in-person contact, telephone calls, emails, or any other similar contact.³⁹

³⁶ § [11125.4\(a\), \(c\)](#).

³⁷ §§ [11125\(b\)](#), [11126\(a\)\(1\)](#), [11126\(c\)](#), [11126\(e\)](#); [11126.3\(a\)](#), [11132](#).

³⁸ §§ [11128.5](#), [11129](#).

³⁹ 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 involve the Act, but they do construe similar provisions of the Ralph M. Brown Act (§§ [54950 - 54963](#)), a counterpart to the Act applicable to local government bodies.

Individual Contacts with Commissioners

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.”⁴⁰ Thus, as explained in Memoranda [2025-13](#) and [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.⁴¹

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 legislative body the comments or position of any other member of the state body.⁴²

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.⁴³

Enforcement

Section 11130.7 provides:

Each member of a state body who attends a meeting of that body in violation of

⁴⁰ § [11122.5\(c\)\(1\)](#).

⁴¹ See California Law Revision Commission, *Handbook of Practices and Procedures* § [375](#), which provides:

(a) Written communication addressed to the Chair or an individual Commissioner regarding a Commission study and received by the staff shall be treated in the same manner as a communication to the Commission as a whole. Communications related to a topic under study shall be treated as any other public comment. Staff shall respond to communications related to other business of the Commission.

(b) If the Chair or an individual Commissioner receives a written or oral communication from an interested person regarding a Commission study, it is recommended that the Chair 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 may be sent to <commission@clrc.ca.gov>.

⁴² § [11122.5\(b\)\(2\)](#).

⁴³ § [11122.5\(c\)\(2\)-\(5\)](#).

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.⁴⁴

Teleconference Meetings

Three sections of the Act⁴⁵ 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 “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.”⁴⁶

Over the past few years, the Commission has benefitted from these provisions of law permitting teleconferencing, which have been helpful to achieving a quorum when Commissioners cannot physically attend a meeting. A 2021 Little Hoover Commission recommendation emphasized the importance of allowing state bodies more flexibility in conducting teleconference meetings and restated 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.*”⁴⁷

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\(b\)](#). This section requires a state body to comply 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.⁴⁸
- (2) The agenda of the meeting must be posted at each teleconference location.⁴⁹
- (3) At least one member of the state body must be physically present at each teleconference location identified in the notice of the meeting.⁵⁰
- (4) All parts of the meeting other than a closed session must be audible to the public

⁴⁴ § [11130.7](#).

⁴⁵ §§ [11123\(b\)](#), [11123.2](#), and [11123.5](#).

⁴⁶ §§ [11123\(b\)\(2\)](#), [11123.2\(a\)\(2\)](#), [11123.5\(a\)\(3\)](#).

⁴⁷ Little Hoover Commission, [The Government of Tomorrow: Online Meetings](#) (June 2021), p. 4 (emphasis added).

⁴⁸ § [11123\(b\)\(1\)\(C\)](#).

⁴⁹ *Id.*

⁵⁰ § [11123\(b\)\(1\)\(F\)](#).

at each teleconference location.⁵¹

(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.⁵²

(6) All votes must be taken by rollcall.⁵³

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 would make conducting a teleconference meeting pursuant to [Section 11123\(b\)](#) “considerably more difficult” than the Commission’s regular practice of conducting in-person meetings.⁵⁴ This was true for the Commission’s teleconference meeting held pursuant to [Section 11123\(b\)](#) in February 2024, which required renting space for the meetings and travel by Commissioners and the staff to three separate meeting locations.⁵⁵

Teleconference Meetings Pursuant to Section 11123.2

On September 22, 2023, the Governor signed [SB 544](#) (Laird), which provided a temporary alternative authority, [Section 11123.2](#), for state bodies to meet via teleconference.⁵⁶ The primary requirements for conducting a teleconference meeting pursuant to this section differ from the requirements of [Section 11123\(b\)](#) in several respects. [Section 11123.2](#) states:

- (1) A majority of the state body members must attend the meeting at a single primary teleconference location,⁵⁷ from which the meeting must be audible and visible to the public,⁵⁸ and from which members of the public may participate.⁵⁹
- (2) However, a minority of the state body membership 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.⁶⁰

⁵¹ § [11123\(b\)\(1\)\(B\)](#).

⁵² §§ [11123\(b\)\(1\)\(C\)](#), [11125.7](#).

⁵³ § [11123\(b\)\(1\)\(D\)](#).

⁵⁴ See Memorandum [2013-3](#), pp. 1-2.

⁵⁵ The Commission held multiple meetings via teleconference from May 2020 through June 2023, but executive orders relating to COVID-19 had suspended some of the requirements of § [11123\(b\)](#) for most of that period. See e.g., Executive Order [N-25-20](#) and [N-29-20](#).

⁵⁶ [2023 Cal. Stat. ch. 216](#) (SB 544, Laird), § 1. The enacted section provided for its own repeal on January 1, 2026. § [11123.2\(p\)](#). However, effective January 1, 2026, that repeal date was extended to December 31, 2029 by [2025 Cal. Stat. ch. 222](#) (SB 470, Laird).

⁵⁷ § [11123.2\(j\)\(1\)](#).

⁵⁸ § [11123.2\(c\)](#).

⁵⁹ § [11123.2\(a\)\(2\)](#).

⁶⁰ § [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 suggests the intent of the Legislature was to allow members to attend the meeting from separate remote locations.

- (3) Any member of the state body attending the 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.⁶¹
- (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 the member of the state body participating in the meeting remotely.⁶²
- (5) During the open portion of any meeting accessible via the internet or other online platform, all members of the body attending the meeting must 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.⁶³

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

Teleconference Meetings Pursuant to Section 11123.5

SB 544 (Laird) also amended Section 11123.5, to authorize an additional means of holding a teleconference meeting by an advisory board, advisory commission, advisory committee, advisory subcommittee, or similar multimember advisory body. Among other changes, it removed the requirement that a quorum of members be present at the primary physical location of a meeting.⁶⁴ The Commission has conducted meetings under this provision since May 2024.

Based on a second amendment of Section 11123.5 in 2025, until December 31, 2029,⁶⁵ Section 11123.5 allows *all* members of an advisory board, advisory commission, advisory committee, advisory subcommittee, or similar multimember advisory body to participate in a meeting from remote undisclosed locations inaccessible to the public, if the state body identifies and provides a separate physical location with a staff member present for public participation.⁶⁶ Unless legislation extends the repeal date, that section will revert to the version of Section 11123.5 that existed on December 31, 2023. Thus, as of January 1, 2030,

⁶¹ § [11123.2\(j\)\(4\)](#).

⁶² § [11123.2\(d\)\(1\)](#).

⁶³ § [11123.2\(k\)\(1\), \(2\)](#).

⁶⁴ [2023 Cal. Stat. ch. 216](#) § 2 (SB 544, Laird).

⁶⁵ [2023 Cal. Stat. ch. 216](#) § 3 (SB 544, Laird) would have again required a quorum of a state body to meet at an identified location beginning January 1, 2026. However, this requirement was delayed until December 31, 2029 by [2025 Cal. Stat. ch. 222](#) (SB 470, Laird).

⁶⁶ § [11123.5](#).

a teleconferenced Commission meeting will require a quorum of its members at a single designated location accessible to the public and the other members may participate from remote locations not required to be disclosed or accessible to the public.⁶⁷

In summary, through December 31, 2029, [Section 11123.5](#) requires the following of teleconference meetings:

- (1) The state body conducting the meeting must be an “advisory board, advisory commission, advisory committee, advisory subcommittee, or similar multimember advisory body.”⁶⁸
- (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.⁶⁹
- (3) An agenda for the meeting must be posted at that primary physical meeting location.⁷⁰
- (4) A staff member of the state body must be physically present at that primary physical meeting location.⁷¹
- (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.⁷²
- (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 do so.⁷³
- (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.⁷⁴
- (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.⁷⁵

⁶⁷ § [11123.5](#).

⁶⁸ § [11123.5\(b\)](#).

⁶⁹ § [11123.5\(f\)](#). The word “observe” may be misleading, because as written it appears the law only requires an audio connection. If the meeting is being conducted via audio connection only, it is unclear what the public might be “observing” at such a meeting. Regardless, the Commission’s practice is to conduct meetings via teleconference where the meeting can be observed.

⁷⁰ *Id.*

⁷¹ *Id.*

⁷² § [11123.5\(d\)](#).

⁷³ §§ [11123.5\(c\),\(d\), \(f\), \(g\)](#).

⁷⁴ § [11123.5\(c\)](#).

⁷⁵ § [11123.5\(g\)](#). 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. Regardless, the Commission’s practice is to conduct meetings via teleconference in which members of the public can make public comment remotely.

(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.⁷⁶

The Commission amended its *Handbook* at its May 2024 meeting to affirm that the Commissioners view the Commission as an advisory body for the purposes of Section 11123.5.⁷⁷

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 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.

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

(c) Commissioners may attend in-person Commission meetings via teleconference in compliance with the Bagley-Keene Open Meeting Act 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.

California Constitutional Considerations

The bills adding [Section 11123.2](#) and amending [Section 11123.5](#) expressly recognized that each imposed a limitation on the public's right to access meetings of public bodies within the meaning of Section 3 of Article I of the California Constitution.⁷⁸ That recognition triggers the constitutional requirement that the text of both [Sections 11123.2](#) and — including the applicability provision of [Section 11123.5](#) — be narrowly construed.⁷⁹

At its February 2024 Commission meeting, in view of the logistical difficulty of holding a teleconference meeting under [Section 11123\(b\)](#) with three different physical locations, the Commission directed the staff to further explore the possibility of conducting Commission meetings under [Section 11123.5](#).⁸⁰ As noted above, at the Commission's May 2024 meeting, the Commission decided to revise its *Handbook* to recognize itself as an advisory body for the purposes of Section [11123.5](#) and the Commission has used this

⁷⁶ § [11123.5\(h\)](#).

⁷⁷ [Minutes](#) (May 2024); see also Memorandum [2024-11](#).

⁷⁸ [2023 Cal. Stat. ch. 216](#) § 5 (SB 544, Laird); [2025 Cal. Stat. ch. 222](#), § 4 (SB 470, Laird).

⁷⁹ [Cal. Const. art I, § 3\(b\)\(1\)-\(2\)](#).

⁸⁰ [Minutes](#) (February 2024), p. 3 In the [First Supplement](#) to Memorandum 2023-35 the staff recommended against the Commission holding meetings under §§ [11123.2](#) or [11123.5](#). However, the Commission did not make a formal decision on the format of future meetings at that time. [Minutes](#) (October 2023), pp. 4-5.

authority for all meetings since.

At its December 4, 2025 meeting, the Commission approved its 2026 meeting schedule to include seven in-person meetings. However, if a Commissioner is unable to attend a particular meeting in person, Section 360(d) of the *Handbook* and [Section 11123.5\(d\)](#) allow the 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.⁸¹

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.⁸²

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, 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 a body or board of which they are members.

⁸¹ See Memoranda [2024-42](#), [2025-1](#), p. 3; California Law Revision Commission, *Handbook of Practices and Procedures* § [360\(d\)](#).

⁸² See §§ [82003](#), [82048](#).

Commissioners are officers of the state for purposes of [Section 1090](#).⁸³

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.⁸⁴

While Commissioners typically have no direct involvement in making contracts for goods and services, there are circumstances in which such participation may be 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.⁸⁵

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

Nature of Financial Interest

The “financial interest” referenced in [Section 1090](#) is not to be construed in a restricted and technical manner.⁸⁶ It has been noted that [Section 1090](#) is intended “not only to strike at actual impropriety, but also to strike at the appearance of impropriety.”⁸⁷ 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.”⁸⁸

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 following are types of minimal interests that may be relevant to

⁸³ See *People v. Elliott* (1953) 115 Cal.App.2d 410, 415.

⁸⁴ California Law Revision Commission, *Handbook of Practices and Procedures* §§ [210](#), [900](#), [905](#).

⁸⁵ 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.

⁸⁶ *People v. Honig* (1996) 48 Cal.App.4th 289, 315.

⁸⁷ *City of Imperial Beach v. Bailey* (1980) 103 Cal.App.3d 191, 197.

⁸⁸ *Lexin v. Superior Court* (2010) 47 Cal.4th 1050, 1075 (internal quotations and citations omitted).

Commissioners:

- 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.⁸⁹
- 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.⁹⁰
- A Commissioner's interest in reimbursement for actual and necessary expenses incurred in the performance of official duties.⁹¹

Remote Financial Interest

Section 1090 also does not apply to a “remote” financial interest, as defined in 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.⁹²

“Remote” interests that may be 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.⁹³
- 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

⁸⁹ § [1091.5\(a\)\(10\)](#).

⁹⁰ § [1091.5\(a\)\(1\)](#); see also *Fraser-Yamor Agency, Inc. v. County of Del Norte* (1977) 68 Cal.App.3d 201, 217.

⁹¹ § [1091.5\(a\)\(2\)](#).

⁹² § [1091\(a\), \(c\)](#).

⁹³ § [1091\(b\)\(6\)](#).

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.⁹⁴

Inferences Based on Sections 1091 and 1091.5

Because [Sections 1091](#) and [1091.5](#) establish exceptions for certain types of “minimal” or “remote” financial interests, one can infer that those same types of interests *would* violate [Section 1090](#).⁹⁵

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](#).⁹⁶

Consequences for Violation

A contract that violates [Section 1090](#) may be “avoided” by any party to the contract except the interested officer.⁹⁷ In addition, a “willful” violation of [Section 1090](#) is punishable by a fine or imprisonment and permanent disqualification from holding any state office.⁹⁸ 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.⁹⁹

A non-willful violation of the section may also result in civil consequences, depending on the circumstances presented.¹⁰⁰

Commissioners should be cautious regarding potential contracting conflicts. A Commissioner should notify the Executive Director if they have a “financial interest” in a person or entity that might conceivably be affected by a Commission contract.

Other Financial Relationship with the 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

⁹⁴ § [1091\(b\)\(14\)](#).

⁹⁵ 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](#)).

⁹⁶ 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 § [1091.5\(a\)\(1\)](#), resulted in finding “as a matter of law” that supervisor had financial interest in insurance contract for purposes of § [1090](#)).

⁹⁷ § [1092](#).

⁹⁸ § [1097](#).

⁹⁹ *People v. Honig* (1996) 48 Cal.App.4th 289, 338.

¹⁰⁰ See *Thomson v. Call* (1985) 38 Cal.3d 633, 699.

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 the section has yet to be construed in any reported appellate opinion. Two advisory opinions from the Attorney General's office address peripheral aspects of the section.¹⁰¹

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."¹⁰² A violation can also subject the state official or employee to civil and criminal sanctions.¹⁰³

¹⁰¹ [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 § 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).

¹⁰² Pub. Cont. Code § [10420](#).

¹⁰³ Pub. Cont. Code §§ [10421-10425](#).

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 applicable to Commissioners. Although this doctrine has rarely been cited in appellate opinions, the Attorney General's office advises that the doctrine remains viable.¹⁰⁴

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....”¹⁰⁵

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.”¹⁰⁶

CALIFORNIA PUBLIC RECORDS ACT¹⁰⁷

As a state agency, the Commission is subject to the California Public Records Act (hereafter, “CPRA”).¹⁰⁸ 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 occasionally receives public record requests, and the staff handles them administratively. In addition, the Commission posts 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.¹⁰⁹ To minimize the difficulties presented by that rule, the Commission included the following in its *Handbook* to regulate its own use of electronic communications for Commission business:

Section 380. 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.

¹⁰⁴ [67 Ops. Cal. Att'y Gen. 369](#), 381 (1984).

¹⁰⁵ *Clark v. City of Hermosa Beach* (1996) 48 Cal.App.4th 1152, 1170.

¹⁰⁶ [70 Ops. Cal. Att'y Gen. 45](#), 47 (1987).

¹⁰⁷ §§ [7920.000-7930.200](#).

¹⁰⁸ §§ [7920.530](#), [7920.540](#).

¹⁰⁹ *City of San Jose v. Superior Court* (2017) 2 Cal.5th 608.

(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.

Respectfully submitted,

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