

Legal Counsel Training for Oct. 5-7 CRC meeting:

Here are answers to some of the questions that have arisen in the last couple of weeks. I am keeping a running tally, so if you have other questions, please send to me and I (or your Chief Counsel) will cover in a meeting in the near future.

Rule of 2 for advisory subcommittees:

If subcommittees have more than 2 members or if subcommittees have decision-making authority, their meetings must comply with Bagley-Keene and other rules for meetings

Gov't Code § 11121 establishes which state bodies must comply with Bagley-Keene:

As used in this article, "state body" means each of the following:

(a) Every state board, or commission, or similar multimember body of the state that is created by statute or required by law to conduct official meetings and every commission created by executive order.

(b) A board, commission, committee, or similar multimember body that exercises any authority of a state body delegated to it by that state body.

(c) An advisory board, advisory commission, advisory committee, advisory subcommittee, or similar multimember advisory body of a state body, if created by formal action of the state body or of any member of the state body, and if the advisory body so created consists of three or more persons.

Quorum of 9 and prohibition of serial meetings:

Cal Const. Art. XXI, § 2(c)(5) Nine members of the commission shall constitute a quorum.

Gov't Code §11122.5. (a) As used in this article, "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.

(b) (1) A majority of the members of a state body shall not, outside of a meeting authorized by this chapter, 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.

Prohibited serial meetings include both a chain of communication, that is, A to B to C etc. until quorum is reached, and a hub (or bicycle wheel) of communications involving quorum of members. So if subcommittee of 2 received communications from 7 or more members on a specific topic and discusses or deliberates on those communications, this is a serial meeting and is prohibited.

“Special vote” in three situations

Cal Const. Art. XXI, § 2(c)(5) The four final redistricting maps must be approved by at least nine affirmative votes which must include at least three votes of members registered from each of the two largest political parties in California based on registration and three votes from members who are not registered with either of these two political parties.

Gov’t Code § 8253 (a)(5) The commission shall select by the voting process prescribed in paragraph (5) of subdivision (c) of Section 2 of Article XXI of the California Constitution one of their members to serve as the chair and one to serve as vice chair. The chair and vice chair shall not be of the same party.

Gov’t Code § 8253 (a)(5) The commission shall make hiring, removal, or contracting decisions on staff, legal counsel, and consultants by nine or more affirmative votes including at least three votes of members registered from each of the two largest parties and three votes from members who are not registered with either of the two largest political parties in California.

Agenda requirements

These are mostly from Bagley-Keene. The one exception is the notice requirement. While Bagley-Keene generally requires a 10-day notice, CRC statutes generally require a 14-day notice.

Gov’t Code § 8253 (a)(1) The commission shall comply with the Bagley-Keene Open Meeting Act. . . . The commission shall provide not less than 14 days’ public notice for each meeting held for the purpose of receiving public input testimony, except that meetings held in August in the year ending in the number one may be held with three days’ notice.

The notice must be given to all who request notice and must be posted. Also the notice must include an agenda with a description of items to be considered, and items may generally not be added after notice is given

Gov’t Code § 11125. (a) The state body shall provide notice of its meeting to any person who requests that notice in writing. Notice shall be given and also made available on the Internet at least 10 days in advance of the meeting, and shall include the name, address, and telephone number of any person who can provide further information prior to the meeting, but need not include a list of witnesses expected to appear at the meeting. The written notice shall additionally include the address of the Internet site where notices required by this article are made available.

(b) The notice of a meeting of a body that is a state body shall include a specific agenda for the meeting, containing a brief description of the items of business to be transacted or discussed in either open or closed session. A brief general description of an item generally need not exceed 20 words. A description of an item to be transacted or discussed in closed session shall include a citation of the specific statutory authority under which a closed session is being held. No item shall be added to the agenda subsequent to the provision of this notice, unless otherwise permitted by this article.

Public comment must be permitted on agenda items and no action may be taken without the opportunity for public comment. Public comment on items not on the agenda must be permitted, but no action may be taken on such comments, except to add to future agenda.

Gov't Code § 11125.7. (a) Except as otherwise provided in this section, the state body shall provide an opportunity for members of the public to directly address the state body on each agenda item before or during the state body's discussion or consideration of the item. . . . In addition, the notice requirement of Section 11125 shall not preclude the acceptance of testimony at meetings, other than emergency meetings, from members of the public if no action is taken by the state body at the same meeting on matters brought before the body by members of the public.

Posting requirements

Under Bagley-Keene, all documents discussed during public meetings must be provided to the public.

Gov't Code § 11125.1 (a). . . [A]gendas of public meetings and other writings, when distributed to all, or a majority of all, of the members of a state body by any person in connection with a matter subject to discussion or consideration at a public meeting of the body, are disclosable public records under the California Public Records Act . . . , and shall be made available upon request without delay. . . .

(b) Writings that are public records under subdivision (a) and that are distributed to members of the state body prior to or during a meeting, pertaining to any item to be considered during the meeting, shall be made available for public inspection at the meeting if prepared by the state body or a member of the state body, or after the meeting if prepared by some other person.

In addition, under CRC's own statutes, all documents regarding redistricting that are received as public comment must be posted.

Gov't Code § 8253 Gov't Code § 8253 (a)(2) The records of the commission pertaining to redistricting and all data considered by the commission are public records that will be posted in a manner that ensures immediate and widespread public access.

The requirements and process for providing documents for PRA request

California's Public Records Act, Gov't Code § 6250 *et. seq.*, is the state equivalent to the federal Freedom of Information Act (FOIA).

Gov't Code § 6253 (a) Public records are open to inspection at all times during the office hours of the state or local agency and every person has a right to inspect any public record, except as hereafter provided. Any reasonably segregable portion of a record shall be available for inspection by any person requesting the record after deletion of the portions that are exempted by law.

And, as noted above, CRC is also subject to its own public disclosure requirements under Government Code § 8253 (a)(2).

The definition of "public record" is very broad and all-inclusive.

Gov't Code § 6252 (g) "Writing" means any handwriting, typewriting, printing, photostating, photographing, photocopying, transmitting by electronic mail or facsimile, and every other means of recording upon any tangible thing any form of communication or representation, including letters, words, pictures, sounds, or symbols, or combinations thereof, and any record thereby created, regardless of the manner in which the record has been stored.

CRC generally has 10 days to respond to PRA requests.

Gov't Code § 8253 (b) Except with respect to public records exempt from disclosure by express provisions of law, each state or local agency, upon a request for a copy of records that reasonably describes an identifiable record or records, shall make the records promptly available to any person upon payment of fees covering direct costs of duplication, or a statutory fee if applicable. Upon request, an exact copy shall be provided unless impracticable to do so.

(c) Each agency, upon a request for a copy of records, shall, within 10 days from receipt of the request, determine whether the request, in whole or in part, seeks copies of disclosable public records in the possession of the agency and shall promptly notify the person making the request of the determination and the reasons therefor. In unusual circumstances, the time limit prescribed in this section may be extended by written notice by the head of the agency or their designee to the person making the request, setting forth the reasons for the extension and the date on which a determination is expected to be dispatched. No notice shall specify a date that would result in an extension for more than 14 days.

Keeping or disposing of notes

CRC is required to have a records retention policy. At a meeting in the near future, you will be asked to adopt your own policy. This may be either based on the **Records Retention Policy** of the 2010 Commission, which has been sent to you, or any other ideas you may have.

In the meantime, transient emails or texts such as meeting times, etc. do not need to be retained, but otherwise, please keep everything. Personnel records must be retained, which is why you should send me all your notes from staff interviews. Also, if you use your personal email or telephone texts for CRC business that has a lasting impact and/or may be the subject of a PRA request, please make a copy or a photo of the texts and send to your CRC email account for posterity.

Inquiries saved for later discussion:

An overview of the role of an attorney in support of a commission in general and, specifically, the role of the Chief Counsel

The requirement for providing documents in the case of a lawsuit

Please send me any other questions that occur to you, and I will try to answer right away and also provide information to the full commission.