



CDFA Legal Office

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Bagley-Keene Open Meeting Act



Duties under the Bagley-Keene Act

The Bagley-Keene Open Meeting Act covers all state boards and commissions including District Agricultural Associations.

Each board has essentially three duties under the Act

- To give public notice of meetings to be held
- To conduct any business of the DAA in an open session meeting, except where a closed session is specifically authorized
- To provide an opportunity for public comment before taking any action



What is a Meeting?

A meeting occurs when most of the board convenes, either serially or together in one location, to discuss or decide issues within the board's jurisdiction.



What is a Meeting?

Types of DAA meetings

- Regular Monthly Meetings (10-day notice)
When a quorum meets under normal circumstances
- Committee Meetings
Formed by the board for a specific purpose
- Special Meeting (48-hour notice)
Only for specific purposes with a finding of substantial hardship by 2/3 vote of the board
- Emergency Meeting (1-hour notice)
Crippling disaster or work stoppage that severely impacts public health or safety



Committee Requirements

Committees consist of board members

Standing Committee

- Three or more board members, full compliance with the Act
- Two board members acting with authority delegated by the Board, full compliance with the Act



Committee Requirements

Committees consist of board members

- Other non-committee board members may attend any noticed committee meeting but may not participate in any way. Attend as observers only.
- It is strongly recommended that an announcement be made at the beginning of the meeting that the non-committee board members are in attendance only as observers and not participants.
- Committees report activity or recommendations to the board each month.



Committee Requirements

Committees consist of board members

Ad Hoc Committee

- Two board members and staff. The Act does not apply. For information gathering only.
- Reports activity or recommendations to the board each month.



Committee Requirements

Advisory Committees

(Special Exemption for DAAs – Food & Ag. Code § 3964.5)

- Committees consist of board members
- Formed by formal resolution or action.
- Consists of less than a quorum (4) of Board members.



Committee Requirements

Advisory Committee

- Meetings must be open to the public.
- If holds regular meetings, bylaws or board policy manual shall state the regular schedule. No other notice of regular meetings is required but post schedule online.
- Any other meeting outside of the regular schedule shall be noticed at least 24 hours in advance (online and emailed to the public requesting notice).



Serial Meetings

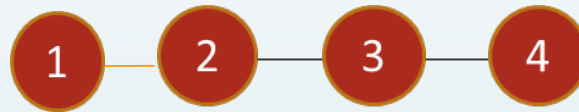
Most board members may not use a series of communications directly or through personal intermediaries (CEO) or technological devices (texts and e-mails) to deliberate or act on any item of business

- A series of communications that collectively involve most of the board members
- Several contacts between board members. Each contact involves less than a majority, but when all contacts are added up, involves a majority of the board

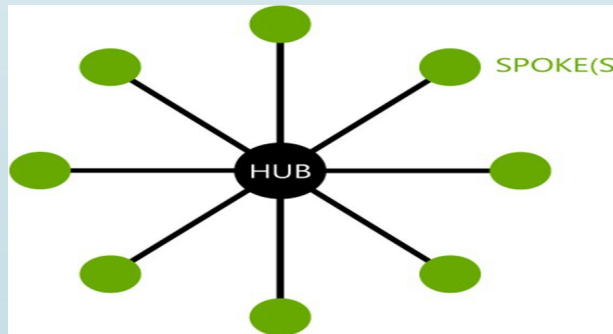
SERIAL MEETINGS ARE PROHIBITED

SERIAL MEETINGS

Serial Linear Communication



Serial Hub Communication





SERIAL MEETINGS

↴ Examples of Serial Meetings

- Includes all forms of communications
- Communications intended to clarify issues
- Communications to facilitate/advocate the resolution of an issue
- Study Sessions
- Pre-meeting briefings
- Does not include one-way communications from staff, F&E, or Legal for administrative purposes only



What Is Not A Meeting

- Individual contact between a board member and the public
- Attendance at a social event or an event of another government body provided that the members do not discuss board business
- Examples
 - Conferences, Conventions, Fair Fundraiser Event
 - Local Public Meeting
 - School Board Meeting
 - An open and noticed meeting of another state body or local legislative body
 - City Council, Board of Supervisors Meeting, etc.
 - A purely social or ceremonial occasion
 - Fair Fundraiser Event, Farm Show Event, etc.
- It would violate the Act for most board members to meet privately over lunch and discuss how the Act applies to the Board. (Cal.Atty.Gen. Opinion No. 18-901, September 22, 2020).



What Constitutes a Quorum

A quorum is the minimum number of members who must be present for a board to legally transact business

- Considering DAA boards have 9 seats available, each board meeting must have at least 5 board members present to satisfy the quorum requirement
- If a board has less than 9 appointed members, the quorum requirement does not change and is still based on the 9 board seats

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Lack of a Quorum

- A board **cannot** transact business (deliberate and vote) without a legal quorum
- If the meeting has been properly noticed before the lack of quorum is discovered, the meeting may proceed for hearing informational items (e.g. committee reports, staff reports, and public comment only)



Meeting Notice Requirements

Legal Office Template Provided

- The meeting notice and agenda are two separate documents, posted together
- Font style and size must meet ADA requirements (e.g. Arial 11 pt.)
- The agenda must identify all items of business to be discussed or transacted with enough specificity to inform the public



Meeting Notice Requirements

Legal Office Template Provided

- The CEO prepares and notices the agenda with the board president's approval
- Americans with Disabilities Act information for accommodation
- Public comment item for matters not on the agenda
- 10-day posting requirement on-line and at the office



Teleconference Meetings

- The Act allows teleconference meetings to meet the quorum requirement if the teleconference location is noticed and allows public access and ADA compliant
- COVID-19 Executive Orders have relaxed the Act's teleconference requirements
 - Teleconference locations do not need to be noticed or open to the public
 - Post teleconference information on notice and agenda. If using Zoom, include both the toll-free phone number and internet link
 - Include website where meeting documents may be downloaded
- All other Act requirements still apply!
 - Compliance tips included throughout this presentation



Public Comment on Agenda Items

- The DAA must provide the public an opportunity to directly address the Board on each open session agenda item
- Board president must call for public comment
- May take place before or during board discussion, but always before the Board acts
- The board must allow for critical and negative comments to be expressed



Opportunity for Public Participation

General Information

- A board may adopt a public comment policy that allows the board president to limit the time each public member may speak on an item. The policy should be included in all meeting agendas.
 - Reasonable amount of time: 3 to 5 minutes per person
- A board may develop a policy identifying the location of all media using recording devices during meetings



Opportunity for Public Participation

- Disruptive members of the public may be removed from the meeting after receiving a warning
- A public participation is not required to state his/her name to provide public comment
 - Cannot require public to enter name before speaking or joining a Zoom or other teleconference meeting



Opportunity for Public Participation

Public Comment on Items NOT listed on the Agenda

- “Public comment on items not on the agenda” must be included on all noticed meeting agendas
- Because the issue is not on the agenda, the board may not engage with the speaker or respond to questions and accusations



Items of Business **NOT** on the Agenda

The board may **NOT** deliberate or vote on matters that are not on the agenda

- Any board member may ask that the item be on a future agenda
- Board members may ask questions for clarification and discuss only to the extent necessary to determine whether the item should be placed on a future meeting agenda
- The board president may refer the matter to the CEO, a standing committee, or create an ad hoc committee for purposes of
 - Researching further information
 - Reporting to the board at a future meeting
 - Directing the matter be placed on a future agenda



Board Deliberation & Action

- Each board member should be called upon by the president to provide the opportunity for that member's comment
- Teleconference tip: Before speaking, state your name each time
- Zoom tip for CEOs or meeting administrators: "Name" individuals with a title indicating they are on the board (e.g. Director Smith)
- No "secret" deliberation (e.g. texting or emailing other members during the meeting)
- Voting by roll call is required. CEO or staff calls out each board

member by name and the board member responds with a
yes/no vote



Abstentions and Conflict of Interest

- Abstention is frowned upon unless the board member has a conflict of interest
 - Board members must participate and vote on the issues before them to carry out DAA business



Abstentions and Conflict of Interest

- Conflict of Interest
 - Board members must deliberate and act in the best interest of the DAA
 - A board member's financial or personal interest may conflict with the DAA's best interest
 - If there is a conflict of interest, the board member must abstain from participating in board deliberation and action on the matter
 - Abstention includes leaving the board room for that agenda item to prevent any undue influence
 - A conflict of interest may affect the board's quorum



Abstentions and Conflict of Interest

Political Reform Act

➤ **Key Question:**

Whether it's reasonably foreseeable that a decision will materially affect the value of the Board member's financial interest?

- This also includes spouse and children's financial interests.
- If yes, the Board member must recuse him or herself from the decision.
- There may be exceptions – Request legal analysis



Abstentions and Conflict of Interest

Financial Interest in Contracts (Gov. Code 1090)

- Board members are prohibited from being financially interested in a contract in both her public and private capacities
- Prohibition against “self-dealing”
- A board cannot contract with a board member or CEO’s business (spouses count)
 - Abstention is not enough!



Abstentions and Conflict of Interest

Examples:

- A board member owns a paving company. May the DAA contract with the board member's company for repaving the parking lot? No – even if the board member abstains
- The CEO's wife is a tech professional. May the DAA contract with her to design a mobile app for the fair. No – even if the board member abstains



Abstentions and Conflict of Interest

Financial Interest in Contracts (Gov. Code 1090)

- If a board member or CEO has one of the following economic relationships with a contractor, then he/she must abstain:
 - Employee, attorney, agent, or broker
 - Supplier of services or goods
 - Landlord-tenant
 - Nonprofit officer or employee
 - Spouse has one of the above economic relationships
(This is not an exhaustive list)



Abstentions and Conflict of Interest

- Board member must abstain and cannot influence other members
 - The contract at issue may be “pulled” from the “consent calendar”
- CEO cannot participate in negotiating, influencing, or making the contract



Abstentions and Conflict of Interest

- **When in doubt, sit it out!**

Avoid any public perception of impropriety

- Conflict of Interest laws are nuanced and fact-specific
 - Ask CDFA Legal for a legal determination
 - There are exceptions for certain conflicts of interest



Abstentions and Conflict of Interest

- Board members and CEOs are required to take Ethics Orientation training every two years (CDFA Online University)
- Form 700s must be filed annually with the Fair Political Practices Commission and F&E Branch by April 1



Meeting Minutes

- Minutes must be made available to the public during the meeting at which they are approved
- Minutes should include the following
 - Attendance/Absence of Directors
 - All motions, resolutions, and action taken by the Board
 - Reports or recommendations brought forth by the DAA's committees
 - Need not contain a detailed discussion of who said what, but must give a true representation of all matters discussed and the views of the participants
 - Documents considered by the board while deliberating/taking action on an agenda item (provided by CEO, committee or public)



Recording Votes

For all agenda items for which the board acted, the minutes must reflect the vote or abstention of each board or committee member

- No secret ballots, No voting by proxy
- Roll call vote required
- A tie in the vote constitutes no action taken [Motion fails]

Recording Votes

The meeting minutes must include each board member's name and their vote for each item, i.e. yes, no, abstained

- “Passed Unanimously” does not satisfy this requirement
- Note abstentions due to conflict of interests
- Example of spreadsheet list

Board Member	Approved (Yes Vote)	Not Approved (No Vote)	Abstained
Board Member Name (Made Motion)	X		
Board Member Name	X		
Board Member Name	X		
Board Member Name (Seconded Motion)	X		
Board Member Name	X		
Board Member Name			X

List each name and vote:

Smith – Yes, Jenkins – No, Walker – Yes, Jones – Yes,
Brown – No, Rodgers – Abstained due to conflict of
interest



Sign-in Sheets and Right to Record

- Sign-in sheets cannot be required as a condition of attending a board meeting
 - Cannot require the public to enter a name to join a Zoom or teleconference meeting. May register as “Guest”
- If circulated, the sign in-sheet must clearly state that it is optional and that persons may attend and participate regardless of whether they provide the information



Sign-in Sheets and Right to Record

- Any person attending a meeting has the right to audio or video record, take photos or broadcast the meeting
 - Unless the recording or broadcast is disruptive or obstructs the view of the board or public participants
 - CEO or meeting administrator must grant recording rights to the public or media for Zoom meetings



Public Access to Meeting Records

- The public is entitled to access meeting records
 - All requests for records must be forwarded to the Legal Office for processing
- A Zoom meeting recording is a public record and releasable
- Any documents considered by the board or committee members during a meeting, copies must be made available to the public during the meeting
 - For teleconference or Zoom meetings, include website on meeting notice where the public may download meeting packet
 - Zoom allows posting of documents to “comments” or via screen-view
- If documents are presented to the board or committee during a meeting by a presenter or the public, the documents must be made available for public inspection after the meeting



Meeting Disruptions

- If a meeting is willfully interrupted by a group or groups of persons and
 - Orderly conduct of meeting is rendered infeasible and
 - Order cannot be restored by removal of individuals
- The board president may order the room cleared and continue with the agenda
- Members of the media not participating in the disturbance must be allowed to attend
- Zoom allows meeting administrators the ability to mute or remove individuals from a meeting

Conducting Closed Session Meetings





Notice of Closed Session

- Specific notice, agenda, and reporting requirements
- Closed sessions may only be held for specific purposes cited in the Act and be held only during a regular or special meeting
 - The agenda item must reference the specific Government Code section
 - Submit all proposed closed session items to the Legal Office for review
- If a board does not genuinely intend to hold a closed session, the meeting's agenda must not list a closed session as a placeholder
- Only matters listed on the agenda for the closed session may be discussed in that closed session



Notice of Closed Session

Closed Sessions are authorized for the following:

- Personnel Matters (CEO)
 - Does not include routine staff issues under the CEO's duties
 - Does not include issues between board members
- Pending Litigation
 - Attorney must be present during the closed session
- Real Estate
 - For purposes of negotiating price and terms of payment only
- Threat of Criminal or Terrorist Activity



Adjourning to Closed Session

In open session, the President must announce that the board is entering closed session, and

- State the purpose of the closed session
- State who is to attend the closed session and who should exit the room (or telephone call with CDFA Legal)
- Announce that after the closed session, the open session will reconvene, and any action and roll call of votes taken will be announced

Once in a closed session, the board president or attorney should remind board members to keep the discussion confidential. Sharing information outside of the closed session waives the privilege.



Conducting Teleconference Closed Sessions

- Set-up a confidential teleconference line for the closed session, separate from the open session line
 - Do not notice the teleconference line on the agenda
 - Email to all directors in advance of the meeting
- Conduct a roll call to convene a closed session to ensure all directors are on the line



Conducting Teleconference Closed Sessions

- While in closed session, the public teleconference line must be kept open for purposes of reconvening open session
- Ensure that Board members and CEO are disconnected from the public teleconference to maintain closed session as confidential!
- Zoom tip: CEO or meeting administrator may set-up a “waiting room” for the public during closed session
 - Do no record closed session



Closed Session Minutes

- Minutes of the closed session must be taken and kept in a confidential file, separate from the open session minutes
 - Disclosable only to those necessary; but not to the subject of the closed session
 - President should designate the CEO or other board member to take minutes
 - President and Vice President approve minutes by signing
 - Include any legal memo with minutes
- Include any action taken in closed session
- Record deliberations in summary – no transcription
- Do not audio record closed sessions



Personnel Matters

- To consider the appointment, employment, performance evaluation, disciplinary action (including dismissal), or hear complaints/charges against the CEO
- If considering disciplinary action or hearing complaints/charges:
 - CEO must be served with a notice of their right to a public hearing
 - If the CEO chooses to hold a public hearing, it must be properly noticed on the meeting agenda
 - The board president should contact F&E for CDFA Human Resources & Legal Office for assistance
- Compensation of the CEO and/or staff as a fiscal

or budget matter must be held in open session



Real Estate Matters

Purpose

- For the Board to provide instructions to its negotiator regarding price and terms of payment
- Agenda must identify the specific parcel, Board's negotiator, and the party with whom the Board is negotiating.
- President announces in public session the purpose of the closed session as identified on the agenda



Pending Litigation Matters

- To receive legal advice from the board's attorney[s] and protect the attorney-client privilege

- “Pending” litigation can mean:
 - Significant risk of litigation to the Board
 - Board is deciding whether to file formal litigation
 - Formal litigation has been filed against the Board



Pending Litigation Matters

- CDFA Legal must be in attendance in-person or via phone
- If not in attendance, the closed session is not privileged, board members may be deposed, and any notes subpoenaed
- CDFA Legal must prepare a confidential memo authorizing the closed session. This memo should be filed with the closed session minutes



Reconvening into Open Session

- Upon adjourning the closed session, the open session must reconvene to announce any closed session action and roll call vote taken
 - For teleconference meetings, therefore the open session line must remain open to the public during closed session



Reconvening into Open Session

- The President does not announce action taken regarding litigation or direction given to its attorney or negotiator
 - “No disclosable action taken”
 - “No action to report”
 - “Board provided direction to its negotiator”
 - “Board provided direction to its legal counsel”



Questions?

