

Open Meeting Act and Conflicts of Interest

Storm Water Advisory Task Force

- Open Meeting Act
- Conflicts of Interest

Open Meeting Act

- Background
- Purpose of Act
 - To preserve the public's right to monitor and participate in the decision-making process of state entities
- Applicability
 - The Task Force is considered a “state body” under the Open Meeting Act. Task Force members and decisions are subject to its requirements

Open Meeting Act

- A quorum (i.e. majority) of Task Force members may not discuss an item outside a duly noticed, public Task Force meeting
 - Prohibited discussions include meeting in person, telephone calls, or e-mails involving a quorum of Task Force members
 - The rule is not only triggered by a quorum of Task Force members discussing the item at the same time; the rule can also be triggered by serial meetings or conversations
- There is no exception for de minimis affairs; the matter discussed need only be within the Task Force's jurisdiction.

Open Meeting Act

- Notice and Accessibility
 - Must be provided at least 10 days in advance of the meeting
 - Must be published on the Task Force website
 - Must include an agenda that reasonably describes all matters to be discussed at the meeting.
 - Accessibility
- State Water Board staff will reserve accessible meeting space and prepare meeting notices

Open Meeting Act

Public Participation

- The public has a right to directly address the Task Force on each agenda item before or during the Task Force's discussion
 - Task Force may impose reasonable limitations on the time available for public comment
- Closed session
 - Available in limited circumstances not generally applicable to the Task Force (generally involves personnel matters or litigation matters)

Open Meeting Act

- Violations of the Open Meeting Act are misdemeanors attributable to individual members
- Task Force decisions could be invalidated

Conflicts

- State Water Board expects Task Force members to comply with applicable state conflict of interest laws and regulations
- Political Reform Act (PRA) and FPPC regulations provide the primary framework
- Scope of this Presentation

Conflicts

- PRA/FPPC conflict of interest provisions govern the conduct of “public officials”
 - Cannot participate in matters in which they have a financial interest
 - Cannot participate in matters in which they are biased/prejudiced or have demonstrated bias/prejudice
 - Financial disclosures

Conflicts

- No conflict of interest under the PRA and the FPPC regulations if the individual is not a “public official.” 2 CCR 18700(b)
 - Exception: Government Code section 87104 contains a special requirement for advisory committee members, even if those members are not considered “public officials.”

Conflicts

- “Public Official” – A member, officer, employee, or consultant of a state or local agency.
 - Can include unsalaried members of a committee, but only if the committee has final governmental decisionmaking authority.
 - A committee like the Task Force does not have such authority if it is formed solely to prepare a report or recommendation to another governmental agency. 2 CCR 18700(b)
 - Caveat: A committee may be judged to possess such authority if, over an extended period of time, its recommendations are approved by another governmental agency without significant modification.



Conflicts

- Exception: Special conflict of interest requirement for advisory committee members
 - Advisory committee members cannot be paid to lobby the advisory committee on a decision involving a contract, grant, loan, license or permit.
 - Prohibition applies to members not normally considered “public officials”

Conflicts

- Grant Program Guidelines
 - Often contain conflict of interest provisions
 - May contain specific requirements for project reviewers, grantees, and project managers

Conclusion

- Open Meeting Act Reference:
 - Attorney General's Guide to Bagley-Keene
- Conflicts: Use common sense
- Water Board attorneys are available to help you with specific questions

Open Meeting Act

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Conflicts

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