



## **Bill Analysis**

Author: Quirk

Sponsor:

Bill Number: AB 1733

Related Bills: See Legislative  
History

Introduced: January 31, 2022

### **SUBJECT**

Bagley-Keene Open Meeting Act-Expanded Use of Teleconferencing

### **SUMMARY**

This bill would, under the Government Code (GC), modify provisions of the Bagley-Keene Open Meeting Act (Bagley-Keene Act) to require public meetings to be held by teleconference, modify the definition of a "meeting," revise public noticing requirements, add requirements should remote teleconferencing fail, and make other nonsubstantive technical changes; and would, under the Business and Professions Code, modify licensing board meeting requirements for the Department of Consumer Affairs.

This is the department's first analysis of the bill and only addresses the provisions of the bill that would impact the department.

### **RECOMMENDATION**

No position.

### **SUMMARY OF AMENDMENTS**

Not applicable.

### **REASON FOR THE BILL**

The reason for the bill is to enhance public access to state and local agency meetings by allowing expanded use of teleconferencing during the COVID-19 pandemic.

### **ANALYSIS**

With respect to all meetings of a state body, this bill would modify the current requirements of the Bagley-Keene Act under the GC, to add to the definition of a "meeting," any meeting that is held entirely by teleconference. For any portion of a teleconferenced meeting that is required to be open to the public, this bill would require that the meeting also be visible, in addition to being audible, at the physical location identified in the meeting notice. In addition, this bill would clarify

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the definition of a “teleconference” to include a connection by telephone, an internet website, or other online platform. Furthermore, the state body would not be prohibited from providing members of the public with additional physical locations to observe and address the state body.

This bill would require the state body to provide a means by which the public may remotely hear audio of the meeting or remotely hear and observe the meeting, and a means by which the public may remotely address the state body, as appropriate, through either a two-way audio-visual platform or a two-way telephonic service. If the state body elects to use only a two-way telephonic service, the state body would also be required to provide live webcasting of the open meeting.

With respect to a state body’s public meeting notice, this bill would require that the notice specify how members of the public could access the meeting remotely, including sufficient information necessary to access the teleconference. The meeting notice also must specify each designated physical meeting location to hear, observe, and address the state body. The members of the public would still be entitled to exercise their right to directly address the state body during the teleconferenced meeting without being required to submit written or public comments prior to the meeting.

The members of the state body would be able to remotely participate in a meeting, and to be physically present and participate at a designated physical meeting location. However, having at least one member of the state body at the physical meeting location designated in the meeting notice would no longer be required. The bill would also provide that any closed portion of the teleconferenced meeting may not include consideration of any of the open meeting agenda items.

The existing requirement for a state body to post a meeting agenda at least 10 days in advance of the meeting would be not impacted. The agenda must be posted on the state body’s internet website and, on the day of the meeting, at any physical meeting location designated in the notice of the meeting. However, this bill would provide that the meeting notice and the agenda would not disclose information regarding any remote location from which a member is participating. The bill would however require members attending a meeting from a remote location to disclose whether any other individual that is 18 years of age or older is present in the room, as specified.

If it is determined that remote participation has failed during a meeting and cannot be restored, the state body would be required to end or adjourn the meeting, and in addition to any other requirements that could apply, the state body would be required to provide notice of the meeting’s end or adjournment on the state body’s internet website and by email to any person who has

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requested meeting notices from the state body. If the meeting would be adjourned and reconvened on the same day, further notice must be provided by an automated message on a telephone line posted on the state body's agenda, internet website, or by a similar means, that would communicate when the state body intends to reconvene the meeting and how a member of the public would be able to hear audio of the meeting or observe the meeting.

For purposes of state body open meetings, the following definitions would apply:

- A) "Teleconference" means a meeting of a state body that provides for a connection by electronic means, including by telephone, an internet website, or other online platform, through either audio or both audio and video. This section does not prohibit a state body from providing members of the public with additional physical locations in which the public may observe and address the state body by electronic means, through either audio or both audio and video.
- B) "Remote location" means a location from which a member of a state body participates in a meeting other than any physical meeting location designated in the notice of the meeting. Remote locations need not be accessible to the public.
- C) "Remote participation" means participation in a meeting by teleconference at a location other than any physical meeting location designated in the notice of the meeting. Watching or listening to a meeting via webcasting or another similar electronic medium that does not permit members to interactively hear, discuss, or deliberate on matters, does not constitute participation remotely.
- D) "Two-way audio-visual platform" means an online platform that provides participants with the ability to participate in a meeting via both an interactive video conference and a two-way telephonic function.
- E) "Two-way telephonic service" means a telephone service that does not require internet access, is not provided as part of a two-way audio-visual platform, and allows participants to dial a telephone number to listen and verbally participate.
- F) "Webcasting" means a streaming video broadcast online or on television, using streaming media technology to distribute a single content source to many simultaneous listeners and viewers. This section does not prohibit a state body from providing members of the public with additional physical locations in which the public may observe and address the state body by electronic means.

The bill provides that this provision would not be construed to deny state bodies the ability to encourage full participation by appointees with developmental or other disabilities. In addition, it provides that state bodies would be required to

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conduct meetings consistent with applicable state and federal civil rights laws, including, but not limited to, any applicable language access and other nondiscrimination obligations.

The bill would also remove certain notice provisions specific to advisory bodies of state boards, e.g., advisory boards, advisory commissions, advisory committees, advisory subcommittees, and similar multimember advisory bodies; and would also make other nonsubstantive technical changes.

The bill provides that this is an urgency statute within the meaning of Article IV of the California Constitution, necessary to protect public health, expand access to government participation by the public, and increase transparency in state government operations during the COVID-19 pandemic.

#### *Effective/Operative Date*

As an urgency measure, this bill would be effective and operative immediately upon enactment.

#### *Federal/State Law*

##### *Federal Law*

Various federal statutes establish open meeting requirements for federal agencies. Agencies may publish notices of upcoming meetings and hearings in the Federal Register. The Federal Advisory Committee Act, which became law in 1972, applies to government committees that advise the President and executive agencies on specific matters. Most federal agencies are subject to the open meeting provisions of the Government in the Sunshine Act, passed in 1976. This law requires "every portion of every meeting of an agency to be open to public observation." The exemptions to this requirement include matters of national defense, internal agency matters, and matters covered by privacy statutes.

##### *State Law*

The preamble of the Bagley-Keene Act of 1967, officially known as the Bagley-Keene Open Meeting Act, provides that it is the public policy of this state that public agencies exist to aid in the conduct of the people's business and the proceedings of public agencies be conducted openly so that the public may remain informed. The Bagley-Keene Act implements a provision of the California Constitution that states that meetings of public bodies and the writings of public officials and agencies shall be open to public scrutiny, and explicitly mandates open meetings for California State bodies, including certain agencies, boards, and commissions. The act facilitates accountability and transparency of government activities and protects the rights of citizens to participate in State government deliberations.

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Under the Bagley-Keene Act set forth in GC sections 11120-11132, all state boards and commissions have essentially three duties. First, to give timely and sufficient public notice of meetings to be held. Second, to provide an opportunity for public comment. Third, to conduct such meetings in open session, except where a closed session is specifically authorized.

Under current law, the GC provides that a “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. In general, meetings of a state body must be open and public and persons must be allowed to attend any meeting of a state body.

The GC also provides that a state body, including an advisory board, advisory commission, advisory committee, advisory subcommittee, or similar multimember advisory body, can hold an open or closed meeting by teleconference for the benefit of the public and state, as long as the meeting complies with all requirements as applicable to other meetings, including the following:

- Any portion of a teleconferenced meeting that is required to be open to the public must be audible to the public at the location specified in the meeting notice.
- If the state body conducts a meeting or proceeding by teleconference, it must post agendas at all teleconference locations and conduct the teleconference meetings in a manner that protects the rights of any party or member of the public appearing before the state body.
- Each teleconference location must be identified in the posted notice and agenda, and be accessible to the public. The agenda must provide an opportunity for members of the public to address the state body.
- All votes must be done by rollcall.
- Any closed portion of the teleconferenced meeting may not include consideration of any of the open meeting agenda items.
- At least one member of the state body must be physically present at the noticed location.

For these purposes, “teleconference” means a meeting of a state body, where members are at different locations, connected by electronic means, through either audio, or both audio and video. This does not prohibit a state body from providing members of the public with additional locations to observe or address the state body by electronic means.

The state body is required to publicly report any action taken, the vote, or the abstention on that action by each present state body member.

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### *Implementation Considerations*

The department has identified the following implementation considerations, and is available to work with the author's office to resolve these and other considerations that may be identified.

The amendments to GC section 11123(b) would require that all meetings be held by teleconference. It is unclear whether on-site meetings would continue to be allowed as long as teleconference options are available for attendees. The author may wish to amend the bill to clarify that either is allowable.

GC section 11125(f) would require state bodies to conduct meetings consistent with applicable state and federal civil rights laws, including, but not limited to, any applicable language access and other nondiscrimination obligations. The use of "including, but not limited to" is broad. It is not clear which state and federal laws are intended. The author may wish to amend the bill to cite the specific state and federal laws that should be referenced.

### *Technical Considerations*

None noted.

### *Policy Considerations*

The bill would require that for any portion of a teleconferenced meeting that is required to be open to the public be visible as well as audible. The FTB conducts meetings relating to proposed regulations that are open to the public. In addition, there are procedures in place to allow the public the opportunity to provide written or oral comments in person or by telephone. The FTB would be unable to hold a solely telephonic regulation meeting (with video) because there is not a visual option in this situation. The author may wish to amend the bill to provide an exception.

## **LEGISLATIVE HISTORY**

AB 29 (Cooper and Rubio, 2021/2022) would have, under the GC, modified the current noticing requirement under the Bagley-Keene Act to require that all writings or materials, connected with a matter subject to discussion or consideration at a noticed meeting, provided to a member of a state body by staff of a state agency, board, or commission, or another member of the state body, be made available on the state body's internet website, and be provided to any person that requests the writings or materials in writing, on the same day that the writings and materials are disseminated to members of the state body, or at least 72 hours in advance of the meeting, whichever is earlier. AB 29 did not pass out of the Assembly Appropriations Committee by the constitutional deadline.

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AB 885 (Quirk, 2021/2022) would have, under the GC, modified provisions of the Bagley-Keene Act to require a state body that elected to conduct a meeting or proceeding by teleconference to make the portion that is required to be open to the public both audibly and visually observable. AB 885 did not pass out of the Assembly Governmental Organization Committee by the constitutional deadline.

AB 1795 (Fong, 2021/2022) would, under the GC, modify provisions of the Bagley-Keene Act to require state bodies to allow all persons to participate in state meetings from both a remote location and in-person, and to allow members of the public to directly address the state body from both a remote location and in-person; and would make a technical correction relating to California Victim Compensation Board hearings. AB 1795 has been referred to the Assembly Governmental Organization Committee.

AB 1291 (Frazier, Chapter 63, Statutes of 2021), under the GC, modified provisions of the Bagley-Keene Act to require a state body to allow at least twice the allotted time for public comment to a member of the public who utilizes translating technology; and made other nonsubstantive technical changes.

AB 2958 (Quirk, Chapter 881, Statutes of 2018), under the GC, modified provisions of the Bagley-Keene Act to authorize members of a state body that is an advisory board, advisory commission, advisory committee, advisory subcommittee, or similar multimember advisory body that has no rule-making authority to attend meetings remotely via teleconference, as specified, provided the meeting complies with all other applicable requirements of the Bagley-Keene Act.

SB 387 (Jackson, Chapter 537, Statutes of 2015), under the GC, among other things, modified the definition of "state body" for purposes of the Bagley-Keene Act to include the State Bar of California.

AB 2028 (Aguilar-Curry & Gonzalez, 2019/2020), under the GC, would have modified the noticing and availability of documents and writings requirements under the Bagley-Keene Act to eliminate the exception for agenda items that have previously been subject to public comment during a public meeting of a committee of the state body from the general rule that allows the public to comment on each agenda item of a state body. AB 2028 did not pass out of the Senate by the constitutional deadline.

## **PROGRAM BACKGROUND**

None noted.

## **FISCAL IMPACT**

This bill would not significantly impact the department's costs.

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## **ECONOMIC IMPACT**

### *Revenue Estimate*

This bill, as introduced on January 31, 2022, would not impact state income or franchise tax revenue.

## **LEGAL IMPACT**

None noted.

## **APPOINTMENTS**

None noted.

## **SUPPORT/OPPOSITION**

To be determined.

## **ARGUMENTS**

To be determined.

## **LEGISLATIVE CONTACT**

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