



## Bill Analysis

Author: Committee on  
Budget and Fiscal Review

Sponsor:

Bill Number: SB 143

Related Bills: See Legislative  
History

Amended: August 28, 2023

### SUBJECT

Budget Trailer Bill: Bagley-Keene Act and Income Exclusion for Microbusiness COVID-19 Relief Grants

### SUMMARY

This bill would do the following:

*Provision No. 1 - Bagley-Keene Open Meeting Act (Bagley-Keene Act)-  
Teleconferencing:*

This provision would, under the Government Code (GOV), add a provision to the Bagley-Keene Act related to meetings conducted by teleconference.

*Provision No. 2 - Gross Income Exclusion for the Office of Small Business Advocate (CalOSBA) Microbusiness COVID-19 Relief Grant Program (Grant Program):*

This provision would, under the Personal Income Tax Law (PITL) and Corporation Tax Law (CTL), extend the gross income exclusion for grants received under the CalOSBA Grant Program.

### RECOMMENDATION

No position.

### SUMMARY OF AMENDMENTS

The August 28, 2023, amendments removed intent language relating to the Budget Act of 2023 and replaced it with the provisions discussed in this analysis.

This is the Franchise Tax Board's (FTB) first analysis of the bill and only addresses the provisions that would impact the FTB.

### REASON FOR THE BILL

The reason for the bill is to make various statutory changes relating to implementation of the Budget Act of 2023.

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## ANALYSIS

### **Analysis Provision No. 1:**

#### *Bagley-Keene Act-Teleconferencing (Sections 6 and 27 of the Bill)*

This provision would reinstate GOV section 11133, a temporary statutory exception for state bodies in California applicable to public meetings through teleconferencing, such as phone or video calls, instead of in-person gatherings until December 31, 2023. This provision would also suspend, for a state body holding a public meeting through teleconferencing, the following rules:

- Each teleconference location of a participating member must be identified in the notice and agenda of the public meeting or proceeding.
- Each teleconference location must be accessible to the public.
- Members of the public may address the state body at each teleconference location.
- Post agendas at all teleconference locations.
- At least one member of the state body must be physically present at the location specified in the notice of the meeting.

#### *Effective/Operative Date*

This provision, as part of a bill providing for an appropriation relating to the Budget Bill, would be effective and operative immediately upon enactment and the changes discussed above would specifically remain in effect only until December 31, 2023, and as of that date is repealed.

#### 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.

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### *State Law*

The preamble of the Bagley-Keene 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.

Under the Bagley-Keene Act, set forth in GOV 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.

The Bagley-Keene Act 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 Bagley-Keene Act 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, if 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 at each teleconference location.
- All votes must be done by rollcall.

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- 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.

GOV section 11123.5 of the Bagley-Keene Act provides additional requirements for meetings conducted by teleconference that apply to meetings held by advisory boards that do not apply to the FTB as a state board.

The FTB is a state body and the FTB's Board Meetings are subject to the Bagley Keene Act.

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

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. State bodies are not prohibited from providing members of the public with additional locations to observe or address the state body by electronic means.

During the COVID-19 public health emergency, former GOV section 11133 suspended specified Bagley-Keene Act requirements for state body meetings held through teleconferencing, including identifying each teleconference location in the notice and agenda of the meeting or proceeding and making each teleconference location accessible to the public. Former GOV section 11133 was effective June 30, 2022, and repealed as of July 1, 2023.

#### Implementation Considerations

None noted.

#### Technical Considerations

None noted.

#### Policy Considerations

None noted.

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## LEGISLATIVE HISTORY

AB 143 (Assembly Committee on Budget, 2023/2024), a companion bill to this bill (SB 143), was re-referred to the Senate Committee on Budget and Fiscal Review, as this bill (SB 143, Senate Committee on Budget and Fiscal Review, Chapter 196, Statutes of 2023) was enrolled and then approved by the Governor on September 13, 2023.

SB 544 (Laird, 2023/2024) would, under the GOV, add a provision to the Bagley-Keene Act related to meetings conducted by teleconference with remote participation by a member of the state body and make other modifications to the Bagley-Keene Act. On September 14, 2023, SB 544 was ordered to engrossing and enrolling.

SB 189 (Senate Committee on Budget and Fiscal Review, Chapter 48, Statutes of 2022), similar to this bill (SB 143), among other things, provided a temporary statutory exception for state bodies in California to hold public meetings through teleconferencing, such as phone or video calls, instead of in-person gatherings, as specified, effective June 30, 2022, and repealed as of July 1, 2023.

AB 2958 (Quirk, Chapter 881, Statutes of 2018), under the GOV, 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.

## PROGRAM BACKGROUND

None noted.

## FISCAL IMPACT

This provision would not significantly impact the FTB's costs.

## ECONOMIC IMPACT

### *Revenue Estimate*

This provision, as amended on August 28, 2023, would not impact state income or franchise tax revenue.

## LEGAL IMPACT

None noted.

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***Analysis Provision No. 2:***

*Gross Income Exclusion for the CalOSBA Grant Program (Sections 22, 23, and 26 of the Bill)*

This provision would, under the PITL and CTL, would extend the gross income exclusion for grants received under the CalOSBA Grant Program from taxable years beginning on or after January 1, 2020, and before January 1, 2023, to taxable years beginning on or after January 1, 2020, and before January 1, 2025.

Revenue and Taxation Code section 41 would not apply to the exclusion allowed under this provision.

*Effective/Operative Date*

This provision, as a part of a bill providing for appropriations relating to the Budget Bill, would be effective immediately upon enactment and would specifically extend the operative date to taxable years beginning on or after January 1, 2020, and before January 1, 2025.

*Federal/State Law*

*Federal Law*

Under federal law, the United States Small Business Administration (SBA) offers several COVID-19 relief programs for small businesses, including the Paycheck Protection Program (PPP) established by the Coronavirus Aid, Relief, and Economic Security (CARES) Act, for small businesses who were in operation on February 15, 2020; the Consolidated Appropriations Act, 2021 (CAA 2021) added another round of PPP loans; the Economic Injury Disaster Loans (EIDL) provides economic relief to businesses, which includes agricultural businesses that experienced a temporary loss of revenue due to COVID-19; and the American Rescue Plan Act of 2021 (PL 117-2), enacted in March 2021, among other things, extended additional CAA funding from December 31, 2021, to September 30, 2022, expanded the PPP to include additional nonprofits and certain internet publishing companies, provided restaurant revitalization grants, and excludes from gross income other targeted EIDL advance grant amounts forgiven pursuant to certain federal provisions.

*State Law*

The Grant Program, which is administered by CalOSBA, provides grants to qualified small businesses that began operation prior to December 31, 2019, and were significantly impacted by the COVID-19 pandemic, among other qualifying criteria. County governments applied through a Request for Proposal process to become eligible grant making entities. Grant making entities administer county programs and award individual grants to qualified microbusinesses in the amount of \$2,500.

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State law provides a gross income exclusion for grants received under the CalOSBA Grant Program for taxable years beginning on or after January 1, 2020, and before January 1, 2023.

*Implementation Considerations*

None noted.

*Technical Considerations*

None noted.

*Policy Considerations*

None noted.

**LEGISLATIVE HISTORY**

AB 176 (Committee on Budget, Chapter 176, Statutes of 2021), amongst other items, would under the CTL, provided that grant allocations received from the CalOSBA Grant Program are to be excluded from gross income.

SB 87 (Caballero and Min, Chapter 7, Statutes of 2021) established the Small Business COVID-19 Relief Grant Program under CalOSBA. The bill exempts grants from gross income under the PITL and CTL and provides authority to the FTB to collect any grants identified for recapture by the CalOSBA.

SB 151 (Committee on Budget and Fiscal Review, Chapter 74, Statutes of 2021), under the PITL and CTL, provided a gross income exclusion for grants received under the CalOSBA Grant Program for taxable years beginning on or after January 1, 2020, and before January 1, 2023.

**PROGRAM BACKGROUND**

None noted.

**FISCAL IMPACT**

This provision would not significantly impact FTB's costs.

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## **ECONOMIC IMPACT**

### *Revenue Estimate*

This provision would, under the PITL and CTL, exclude grant income awarded to qualified microbusinesses from taxable income. Expenses related to income excluded from taxable income are not deductible. Therefore, the amount of the deductions no longer allowed would be offset against the grant income excluded from taxable income. The net effect would generally be a revenue impact of zero.

## **LEGAL IMPACT**

None noted.

## **APPOINTMENTS (All Provisions)**

None noted.

## **SUPPORT/OPPOSITION (All Provisions)**

Per the Senate Floor analysis of SB 143 dated September 8, 2023, there is no support or opposition on file.

## **ARGUMENTS (All Provisions)**

Per the same analysis, there are no arguments on file.

## **LEGISLATIVE CONTACT**

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