



Bill Analysis

Author: Laird

Sponsor:

Bill Number: SB 544

Related Bills: See Legislative
History

Amended: March 20, 2023

SUBJECT

Bagley-Keene Open Meeting Act-Teleconferencing

SUMMARY

This bill would, under the Government Code (GOV), modify provisions of the Bagley-Keene Open Meeting Act (Bagley-Keene Act) to update the means by which the public may remotely participate or observe meetings by teleconference, an online platform, or a physical address; to update the notice requirement to include specific information on how the public may access the meeting; to require a state body holding a meeting through teleconferencing to implement a procedure to accommodate accessibility requests consistent with the federal Americans with Disabilities Act; and to make other nonsubstantive changes.

RECOMMENDATION

No position.

SUMMARY OF AMENDMENTS

The March 20, 2023, amendments removed provisions of the bill relating to the definition of qualified historical property and replaced them with the provisions discussed in this analysis.

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

REASON FOR THE BILL

The reason for the bill is to promote public access to state board and commission meetings.

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ANALYSIS

With respect to all meetings of a state body, this bill would modify the current requirements of the Bagley-Keene Act under the GOV to remove the need to post agendas at all teleconferencing locations, the need to identify in the meeting or proceeding notice or agenda each teleconferencing location, the need to make each teleconferencing location accessible to the public, and the need for the agenda to provide opportunity for the public to address the state body at each teleconference location.

Instead, the bill would require the state body to provide a means by which the public may remotely hear audio of the meeting, remotely observe the meeting, or attend the meeting by providing on the posted agenda a teleconference telephone number, an internet website or other online platform, and a physical address for at least one site, including, if available, access equivalent to the access for a member of the state body participating remotely. The applicable teleconference telephone number, internet website or other online platform, and physical address indicating how the public could access the meeting remotely and in person must also be specified in any required notice.

This bill would also allow staff of the state body to be physically present, in lieu of a member of the state body, at the physical location specified in the notice.

If the state body holds a teleconferencing meeting and allows members of the public to observe and address the meeting telephonically or otherwise electronically, the state body would be required to:

- Implement a procedure for receiving and swiftly resolving accessibility requests for reasonable modification or accommodation from individuals with disabilities, consistent with the federal Americans with Disabilities Act of 1990 (42 U.S.C. Section 12101 et seq.) and for resolving any doubt whatsoever in favor of accessibility.
- Advertise that procedure each time notice is given that members of the public may observe the meeting and offer public comment.

For purposes of the bill, "participate remotely" would mean participation in a meeting at a location other than the physical location designated in the meeting agenda.

Effective/Operative Date

This bill would be effective and operative January 1, 2024.

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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 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 11120-11133, 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.

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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.
- 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. In addition, all state bodies utilizing teleconferencing procedures are urged to use sound discretion and to make reasonable efforts to adhere as closely as reasonably possible to these requirements, to maximize transparency and provide public access to state body meetings.

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.

Implementation Considerations

None noted.

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Technical Considerations

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

For clarity, the following change is recommended:

- In Section 11123(b)(1)(C), replace, "access the meeting remotely" with "participate remotely."

Policy Considerations

None noted.

LEGISLATIVE HISTORY

SB 189 (Senate Committee on Budget and Fiscal Review, Chapter 48, Statutes of 2022), under multiple California codes, among other things, provided a temporary statutory extension for state bodies in California to hold public meetings through teleconferencing, such as phone or video calls, instead of in-person gatherings, as specified.

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.

AB 885 (Quirk, 2021/2022) would have, under the GOV, 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 1733 (Quirk, 2021/2022) would have, under the GOV, modified provisions of the Bagley-Keene Act to require public meetings to be held by teleconference, modified the definition of a "meeting," revised public noticing requirements, added requirements should remote teleconferencing fail, and made other nonsubstantive technical changes; and would have, under the Business and Professions Code, modified licensing board meeting requirements for the Department of Consumer Affairs. AB 1733 did not pass out of the Assembly Governmental Organization Committee by the constitutional deadline.

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AB 1795 (Fong, 2021/2022) would have, under the GOV, modified 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 have made a technical correction relating to California Victim Compensation Board hearings. AB 1795 did not pass out of the Assembly Governmental Organization Committee.

PROGRAM BACKGROUND

None noted.

FISCAL IMPACT

This bill would not significantly impact the Franchise Tax Board's costs.

ECONOMIC IMPACT

Revenue Estimate

This bill, as amended on March 20, 2023, would not impact state income or franchise tax revenue.

LEGAL IMPACT

None noted.

APPOINTMENTS

None noted.

SUPPORT/OPPOSITION

Support

As per the Senate Judiciary Committee analysis, dated April 23, 2023, the following organizations support this bill:

California Acupuncture Board

California Association of Area Agencies on Aging

California Senior Legislature

Health Officers Association of California Little Hoover Commission

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Opposition

As per the same analysis, the following organizations oppose this bill:

- ACLU California Action
- Cal Aware
- California Broadcasters Association
- California News Publishers Association
- First Amendment Coalition
- Howard Jarvis Taxpayers Association

ARGUMENTS

Proponents

As per the same analysis dated April 23, 2023, the California Commission on Aging writes in support of the bill that:

SB 544 will increase transparency and promote public participation in State government by expanding the pool of candidates interested in serving. Older adults and individuals with disabilities are no longer barred from attending meetings or participating in State government simply because they are limited from attending physically. SB 544 will also remove impediments for low-income, rural California residents, and caregivers who cannot or find it challenging to travel to one physical location.

With the flexibilities allowed under the Governor's Executive Order, the California Commission on Aging has realized increased member participation, more public comments, more stakeholder attendance, a decrease in travel costs, and improved organizational efficiency. Other State boards and commissions have also reported similar benefits and better outcomes.

The bill modernizes the teleconferencing stipulations in the Bagley-Keene Open Meeting Act, promoting equity and participation of the public through virtual meetings while safeguarding the private residences of participating members of state bodies.

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Opponents

As per the same analysis dated April 23, 2023, the opposing coalition would be opposed to the bill unless amended, stating:

SB 544, unless it is amended, as it would make drastic and permanent changes to California's landmark Bagley-Keene Open Meeting Act, significantly reducing the transparency, accountability, and democratic nature of California's state bodies. SB 544 would permit government officials doing consequential work on state boards and commissions to conduct public business virtually, without ever again being present at a physical location where the public and press can directly engage them.

While we understand that virtual meetings and temporary measures amid emergencies may be necessary to protect health and safety, public officials serving on public bodies without ever having to convene in person results in a reduction of public access. And while we enthusiastically support increased options for remote participation for members of the public, we oppose this bill because it would forever remove the longstanding requirement that public meetings be held in public places where the public can petition their leaders and other government officials face to face.

LEGISLATIVE CONTACT

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