



## Bill Analysis

Author: Laird

Sponsor:

Bill Number: SB 544

Related Bills: See Legislative  
History

Amended: August 14, 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) related to teleconferencing.

### RECOMMENDATION

No position.

### SUMMARY OF AMENDMENTS

The August 14, 2023, amendments added that a majority of the members of the state body must be present at the same physical location for at least one-half of the state body meetings for each year, that the changes made by this bill would remain in effect only until January 1, 2026, and then the law would revert to its current form.

This analysis only addresses the provisions of the bill that would impact the Franchise Tax Board (FTB).

### REASON FOR THE BILL

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

### 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 directly at each teleconference location.

Amended August 14, 2023

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. The bill would prohibit the notice and agenda from disclosing information regarding the remote location that a member is participating from. In addition, certain existing notice requirements would not be affected by the bill.

Members of the public would be entitled to directly address the state body during the teleconferenced meeting without being required to submit public comments prior to the meeting or in writing.

This bill would require at least one member or staff of the state body to be physically present at the physical location specified in the notice. In addition, a majority of the members of the state body must be present at the same physical location for at least one-half of the state body meetings for each year. Any state body member teleconferencing from a remote location must disclose the presence of any individual over the age of 18 years and the general nature of the member's relationship with such individual.

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 so that members of the public may observe the meeting and offer public comment.

The bill also provides that specific actions must be taken by the state body should the remote participation fail during the public meeting.

Amended August 14, 2023

The bill would add the following definitions:

“Participate remotely” would mean participation in a meeting at a location other than the physical location designated in the meeting agenda.

“Remote location” would mean 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 would not need to be accessible to the public.

The amendments made by this bill to GOV section 11123 would remain in effect only until January 1, 2026, and as of that date would be repealed. Then, on January 1, 2026, Section 11123 would revert to the law as it existed before this bill’s amendments were enacted.

#### *Effective/Operative Date*

This bill would be effective on January 1, 2024, and the changes discussed above would be operative from January 1, 2024, until January 1, 2026.

#### *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.

Amended August 14, 2023

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.
- 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.

Amended August 14, 2023

During the COVID-19 public health emergency, GOV section 11133 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. Section 11133 was effective June 30, 2022, and repealed as of July 1, 2023.

#### *Implementation Considerations*

None noted.

#### *Technical Considerations*

FTB 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.

If the author's intent is to apply the definitions of "teleconference" and "remote location" to the entire section, they could be moved to subdivision (f).

#### *Policy Considerations*

None noted.

### **LEGISLATIVE HISTORY**

AB 143 (Assembly Committee on Budget, 2023/2024) and SB 143 (Senate Committee on Budget and Fiscal Review, 2023/2024), companion bills, would under multiple California codes, among other things, provide a temporary statutory exception for state bodies in California to hold public meetings through teleconferencing, instead of in-person gatherings, as specified.

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 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.

Amended August 14, 2023

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.

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 FTB's costs.

## **ECONOMIC IMPACT**

### *Revenue Estimate*

This bill, as amended on August 14, 2023, would not impact state income or franchise tax revenue.

## **LEGAL IMPACT**

None noted.

## **APPOINTMENTS**

None noted.

Amended August 14, 2023

## **SUPPORT/OPPOSITION**

### *Support*

Per the Assembly Committee on Government Organization analysis, dated July 11, 2023, the following organizations support this bill:

- AARP
- Advisory Council for Sourcewise
- Agency on Aging \ Area 4
- Alcoholic Beverage Control Appeals Board
- Board of Behavioral Sciences
- California Acupuncture Board
- California Architects Board
- California Board of Accountancy
- California Commission on Aging
- California State Board of Optometry
- California State Board of Pharmacy
- California State Council on Developmental Disabilities (SCDD)
- California Structural Pest Control Board
- Dental Board of California
- Dental Hygiene Board of California
- Department of Consumer Affairs, Board of Barbering and Cosmetology
- Department of Consumer Affairs, Speech-language Pathology and Audiology and Hearing Aid
- Dispensers Board
- Disability Rights California
- Health Officers Association of California
- Medical Board of California
- Osteopathic Medical Board of California
- Physical Therapy Board of California
- The Veterinary Medical Board

### *Opposition*

Per the same analysis, the following organizations oppose this bill:

- American Chemistry Council
- American Composites Manufacturers Association
- California Association of Winegrape Growers
- California Manufacturers & Technology Association
- Glass Packaging Institute

Amended August 14, 2023

## **ARGUMENTS**

### *Proponents*

Per the same analysis dated July 11, 2023, the California Commission on Aging writes in support of the bill that:

In March 2020, the Governor issued an Executive Order, EO-N-29-20, authorizing the use of virtual meetings, thus ensuring state business continued during the COVID-19 pandemic. What started as a public safety stopgap has revealed that virtual meetings promote meeting attendance by the appointed members and increase public participation. SB 544 will increase transparency and promote public participation in State governments 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 Californian residents, and caregivers who cannot or find it challenging to travel to one physical location.

### *Opponents*

Per the same analysis dated July 11, 2023, the opposition writes that:

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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