



Bill Analysis

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Bill Number: SB 544

SUBJECT

Bagley-Keene Open Meeting Act-Teleconferencing

SUMMARY

This bill would, under the Government Code (GOV), add a provision to the Bagley-Keene Open Meeting Act (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.

This analysis only addresses the provisions that 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 provide alternative provisions to allow state bodies to conduct meetings by teleconference with a state body member participating from a remote location.

This bill would, in addition to the existing Bagley-Keene Act provisions allowing teleconference meetings, allow the state body to hold an open or closed meeting by teleconference with remote participation by a member of the state body if certain requirements are met. The meeting would still need to satisfy all the existing requirements for teleconference meetings. This new provision would not limit or affect the ability of the state body to hold a meeting under the existing Bagley-Keene Act meeting rules.

Such meetings would have to satisfy the following:

- 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 each teleconference location.
- The telephonic or online access provided to the public must be equivalent to the same access provided to a member of the state body participating remotely.

- The portion of the teleconferenced meeting that is required to be open to the public must be visible to the public at each teleconference location.
- Any notice required by the Bagley-Keene Act must include the applicable teleconference telephone number, internet website or other online platform, and physical address of each teleconference location, and any information indicating how the public could access the meeting remotely and in person.
- The agenda would be required to provide an opportunity for members of the public to address the state body directly on each agenda item before or during the state body's discussion or consideration of the item, consistent with the existing Bagley-Keene Act requirements.
- The required notice or agenda must be posted on the state body's internet website and, on the day of the meeting, at each teleconference location.
- At least one member of the state body would be required to be physically present at each teleconference location.
- All votes taken must be by rollcall.
- The state body must publicly report any action taken and the vote or abstention on that action for each member present for the action.
- The closed portion of a meeting cannot include consideration of any agenda item heard pursuant to a meeting held in the case of an emergency situation.

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.

In addition, certain existing requirements applicable to the meeting agenda and notice 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. A state body would provide members of the public additional locations from which the public may observe or address the state body by electronic means, through either audio or both audio and video.

The bill would also require a majority of the members of the state body to be physically present at the same teleconference location; however, additional members exceeding a majority may attend and participate in the meeting from a remote location. The remote location would not be required to be accessible to the public and could not be disclosed in the notice or agenda.

A member attending and participating from a remote location could count towards the majority if both of the following conditions are met:

- The member has a need related to a physical or mental disability, as those terms are defined in GOV sections 12926 and 12926.1, that is not otherwise reasonably accommodated pursuant to the federal Americans with Disability Act of 1990 (42 U.S.C. Sec. 12101 et seq.).
- The member notifies the state body at the earliest opportunity possible, including at the start of a meeting, of their need to participate remotely, including providing a general description of the circumstances relating to their need to participate remotely at the given meeting.

If a member notifies the body of their need to attend and participate remotely, the body must take action to approve an exception for that member and request a general description of the circumstances for the member's need to participate remotely at the meeting. This would be required for each meeting that the member seeks to participate remotely. The general description of the reason would not exceed 20 words or disclose personal medical information that is already exempt under existing law, including state confidentiality laws.

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. In addition, a member of the state body would be required to visibly appear on camera during the open portion of the meeting that is publicly accessible via internet or another online platform. This requirement would apply unless there is a lack of reliable broadband or internet connectivity that would be remedied by not appearing on video, or when the visual display of meeting materials, information, or speakers on the internet or other online platform requires the visual appearance of a member on camera to cease. If a member ceases to appear on camera due to internet connectivity issues, the member would be required to announce the reason for not appearing when they turn off their camera.

The bill also provides that the state body would be required to end or adjourn the meeting if the remote participation fails during the public meeting and provide notice of the meeting's end or adjournment on its internet website and by email to any person who requested notice of the meeting by email. If the meeting is adjourned or reconvened on the same day, notice would be required to be provided via automated message on a telephone line posted on the state body's agenda, internet website, or by a similar means, to communicate when the state body intends to reconvene the meeting and how the public may hear audio or observe the meeting.

The bill would add the following definitions:

"Teleconference" would mean a meeting of a state body, the members of which are at different locations, connected by electronic means, through either audio or both audio and video.

"Teleconference location" would mean a physical location that is accessible to the public and from which members of the public may participate in the meeting.

"Remote location" would mean a location from which a member of a state body participates in a meeting other than a teleconference location.

"Participate remotely" would mean participation by a member of the body in a meeting at a remote location other than a teleconference location designated in the meeting notice.

The provision discussed above would apply to meeting held by teleconference with a member participating remotely. These amendments would remain in effect only until January 1, 2026, and as of that date would be repealed.

This bill would also modify the provision of the Bagley-Keene Act specifying that an individual is not required to register or provide their name or other information before attending a public meeting. Specifically, this limitation would not apply to an internet website or other online platform that may require the submission of information to log into a teleconferenced meeting, provided that a person required to submit such information is permitted to submit a pseudonym or other anonymous information when using the internet website or other online platform to attend the meeting.

Effective/Operative Date

This bill would be effective on January 1, 2024. The changes regarding meetings held by teleconference with a member participating remotely would be operative only from January 1, 2024, until January 1, 2026. The amendment to the existing Bagley-Keene Act provision applicable to individuals attending meetings without registering would be operative on January 1, 2024.

*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.

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 or 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 Bagley-Keene Act also provides that an individual is not required to register or provide their name or other information before attending a public meeting. In addition, if an attendance list or other similar document is posted where the meeting is to be held or is circulated during the meeting, it must be clear that signing, registering, or completion of the document is voluntary, and anyone can attend the meeting regardless of whether they sign or complete the document.

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.

Technical Considerations

None noted.

Policy Considerations

None noted.

LEGISLATIVE HISTORY

SB 143 (Senate Committee on Budget and Fiscal Review, Chapter 196, Statutes of 2023) among other things, provides a temporary statutory exception for certain rules applicable to state bodies in California that hold public meetings through teleconferencing.

AB 143 (Assembly Committee on Budget, 2023/2024), companion bill to SB 143 (Senate Committee on Budget and Fiscal Review, Chapter 196, Statutes of 2023), has been re-referred to the Senate Committee on Budget and Fiscal Review.

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.

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 would not impact state income or franchise tax revenue.

LEGAL IMPACT

None noted.

APPOINTMENTS

None noted.

SUPPORT/OPPOSITION

Support

Per the Senate Floor analysis of SB 544, dated September 14, 2023, the following organizations support this bill:

- California Commission on Aging (source)
- AARP
- Advisory Council for Sourcewise
- Agency on Aging – Area 4
- Alcoholic Beverage Control Appeals Board
- Alzheimer's Association State Policy Office
- Association of California State Employees With Disabilities
- Board of Barbering and Cosmetology
- Board of Behavioral Sciences
- Board of Registered Nursing

California Acupuncture Board
California Architects Board
California Association of Area Agencies on Aging
California Board of Accountancy
California Foundation for Independent Living Centers
California Senior Legislature
California State Board of Optometry
California State Board of Pharmacy
California Structural Pest Control Board
Dental Board of California
Dental Hygiene Board of California
Disability Rights California
Disability Rights Education & Defense Fund
Health Officers Association of California
Little Hoover Commission
Medical Board of California
Osteopathic Medical Board of California
Physical Therapy Board of California
Physician Assistant Board
SCDD
Seamless Bay Area
Speech-Language Pathology and Audiology and Hearing Aid Dispensers Board
State Bar of California
The Veterinary Medical Board

Opposition

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

ACLU California Action
American Chemistry Council
American Composites Manufacturers Association
California Association of Winegrape Growers
Californians Aware
California Broadcasters Association
California Common Cause
California Manufacturers & Technology Association
California News Publishers Association
Californians Aware: the Center for Public Forum Rights
CCNMA Latino Journalists of California
First Amendment Coalition
Glass Packaging Institute
Greater Los Angeles Pro Chapter of the Society of Professional Journalists
Howard Jarvis Taxpayers Association
Institute of Governmental Advocates
Media Alliance

National Press Photographers Association
 NLGJA: Association of LGBTQ+ Journalists, Los Angeles Chapter
 Orange County Press Club
 Pacific Media Workers Guild, News Guild-Communications Workers of America
 Local 39521
 Radio Television Digital News Association
 San Diego Pro Chapter of The Society of Professional Journalists
 San Franciscans for Sunshine
 Society of Professional Journalists, Northern California Chapter, Freedom of
 Information Committee

VOTES

| Location | Date | Yes Votes | No Votes |
|----------------|--------------------|-----------|----------|
| Concurrence | September 14, 2023 | 30 | 5 |
| Assembly Floor | September 13, 2023 | 50 | 15 |
| Senate Floor | May 15, 2023 | 26 | 3 |

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