

CALIFORNIA STATE BOARD OF BEHAVIORAL SCIENCES

BILL ANALYSIS

BILL NUMBER: AB 885

VERSION: AMENDED MARCH 24, 2021

AUTHOR: QUIRK

SPONSOR: AUTHOR

RECOMMENDED POSITION: NONE

SUBJECT: BAGLEY-KEENE OPEN MEETING ACT: TELECONFERENCING

Overview:

This bill would modernize the Bagley-Keene Open Meeting Act requirements for state bodies conducting a meeting via teleconference.

Existing Law:

- 1) Establishes the Bagley-Keene Open Meeting Act, which requires that actions and deliberations of state agencies be conducted openly. (Government Code (GC) §11120)
- 2) Defines a “state body” to mean any of the following (GC §11121):
 - A state board, commission, or multimember body of the state created by statute to conduct official meetings.
 - A board, commission or committee that exercises authority of a state body delegated by that state body.
 - An advisory board, commission, committee, or subcommittee that consists of three or more persons and is created by formal action by the state body or any of its members.
 - A board, commission, or committee on which a member of a state body serves in official capacity as a representative and that is supported, wholly or partially, by funds from the state body.
- 3) Requires that all meetings of a state body be open and public, and all persons permitted to attend, with certain specified exceptions. (GC §11123(a))
- 4) Permits a state body to hold an open or closed meeting by teleconference if it complies with all requirements in law applicable to other meetings. (GC §11123(b))
- 5) Requires an open teleconferenced meeting to be audible to the public at the location specified in the notice. (GC §11123(b))

- 6) For meetings conducted by teleconference, requires the state body to do the following (GC §11123(b)):
 - Post agendas at all teleconference locations and conduct teleconference meetings in a manner that protects the rights of any party or member of the public appearing before the state body.
 - Identify each teleconference location in the notice and agenda of the meeting, and make each teleconference location accessible to the public.
 - Provide an opportunity for members of the public to address the state body directly at each teleconference location.
- 7) Requires at least one member of the state body to be physically present at the location specified in the notice of the meeting. (GC §11123(b))
- 8) Defines a “teleconference” as a meeting of a state body where the members are at different locations, conducted by electronic means, through either audio or both audio and video. (GC §11123(b))
- 9) Requires a state body to provide notice at least 10 days prior to a meeting, which includes an agenda for that meeting. (GC §11125)

This Bill:

- 1) Defines a “teleconference” as a meeting of a state body where the members are at different locations, connected by electronic means, through both audio and video. (GC §11123(b))
- 2) Requires an open teleconferenced meeting to be both audibly and visually observable to the public at the location specified in the notice. (GC §11123(b))
- 3) For meetings conducted by teleconference, requires the state body to do the following (GC §11123(b)):
 - Post an agenda at the designated primary physical meeting location in the meeting notice where the public may physically attend the meeting and participate. (Deletes the requirement that each teleconference location must be identified in the meeting notice and agenda and be accessible to the public.)
 - Conduct teleconference meetings in a manner that protects the rights of any party or member of the public appearing before the state body.
 - Provide an opportunity for members of the public to address the state body via teleconference directly at each teleconference location.

- 4) Continues to require at least one member of the state body to be physically present at the location specified in the notice of the meeting. (GC §11123(b))
- 5) Subjects all meetings of a state body to the requirements of GC §11123.5 if they hold a teleconference meeting, instead of just advisory board and committee meetings, including the following requirements (GC §11123.5):
 - The state body must provide at least 24-hour notice before the meeting identifying members who will participate remotely (the location of the remote member does not need to be disclosed or accessible to the public). The notice also must identify the primary physical meeting location.
 - While a primary physical location (where the public may physically attend and participate) of the meeting must be identified in the meeting notice, the bill permits a quorum to consist of members in attendance via teleconference or in person physically (i.e. remote member participants count toward establishing a quorum).
 - When a member participates remotely, the state body must provide a means by which the public may remotely observe the meeting's proceedings, both audibly and visually, including the members participating remotely. Information about how to access the meeting remotely must be in the required 24-hour notice.
 - If a remote access fails during a meeting, the state body must adjourn and provide notice of adjournment.

Comment:

- 1) **Author's Intent.** In their fact sheet for the bill, the author's office states the following:

“AB 885 modernizes the teleconferencing statute of Bagley-Keene to encourage more participation and engagement in public service. This bill ensures accessibility for both the public, as well as members of a state body. AB 885 maintains that public meetings remain transparent, by requiring public meetings that are conducted via teleconference to be observable to the public both audibly and visually. Additionally, AB 885 clarifies that members of a board participating remotely shall count towards a quorum and would only require public disclosure of the designated primary physical meeting location from which the public may participate. Lastly, the reform in this bill is not replacing physical meetings, but authorizing state bodies to have the ability to have a meeting via teleconference in addition to a physical meeting location.”

- 2) **Board Utilization of Teleconference.** Prior to COVID-19, the Board occasionally held a meeting via teleconference, but most meetings were held in-person. Any teleconference meetings held typically utilized a telephone conference call line, rather than a video platform.

Due to the COVID-19 pandemic, the Board transitioned to using a video platform for all meetings (first Zoom, and now WebEx). This has seemed to increase the ability of the public to participate in the Board's meetings.

The Board's current setup via WebEx would likely require some changes if the meeting were partially in person (with several Board member and some stakeholders likely in one location together, and some Board members and stakeholders separately at individual locations) so that all parties could see and hear each other. The DCA Legislative Unit has indicated to staff that DCA is looking in to the logistics and cost of doing this.

3) Support and Opposition.

Support

- Little Hoover Commission

Opposition

- None at this time.

4) History

2021

03/25/21 Re-referred to Com. on G.O.

03/24/21 From committee chair, with author's amendments: Amend, and re-refer to Com. on G.O. Read second time and amended.

02/25/21 Referred to Com. on G.O.

02/18/21 From printer. May be heard in committee March 20.

02/17/21 Read first time. To print.

Introduced by Assembly Member Quirk

February 17, 2021

An act to amend Sections 11123 and 11123.5 of the Government Code, relating to state government.

legislative counsel's digest

AB 885, as amended, Quirk. Bagley-Keene Open Meeting Act: teleconferencing.

The Bagley-Keene Open Meeting Act (Bagley-Keene Act), requires, with specified exceptions, that all meetings of a state body, as defined, be open and public, and all persons be permitted to attend any meeting of a state body, except as provided. The Bagley-Keene Act, among other things, requires a state body that elects to conduct a meeting or proceeding by teleconference to make the portion of the meeting that is required to be open to the public audible to the public at the location specified in the notice of the meeting. *The Bagley-Keene Act requires a state body that elects to conduct a meeting or proceeding by teleconference to post agendas at all teleconference locations, identify each teleconference location in the notice and agenda of the meeting or proceeding, and requires each teleconference location to be accessible to the public.* That law authorizes any meeting of a state body that is an advisory board, advisory commission, advisory committee, advisory subcommittee, or similar multimember advisory body to hold an open meeting by teleconference if the meeting complies with the requirements of the act, except as provided. Existing law requires that when a member of a multimember state advisory body

participates remotely the body provide a means by which the public may remotely hear audio of the meeting or remotely observe the meeting. Existing law requires a multimember state advisory body to end or adjourn a meeting if it discovers that a required means of remote access has failed during the meeting, and, if the meeting is to adjourn and reconvene on the same day, that law requires the body to communicate, among other things, how a member of the public may hear audio of the meeting or observe the meeting.

This bill would require a state body that elects 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. *The bill would require a state body that elects to conduct a meeting or proceeding by teleconference to post an agenda at the designated primary physical meeting location in the notice of the meeting where members of the public may physically attend the meeting and participate.* The bill would extend the above requirements of meetings of multimember advisory bodies that are held by teleconference to meetings of all multimember state bodies. The bill would require a multimember state body to provide a means by which the public may both audibly and visually remotely observe a meeting if a member of that body participates remotely. The bill would further require any body that is to adjourn and reconvene a meeting on the same day to communicate how a member of the public may both audibly and visually observe the meeting. The bill would also make nonsubstantive changes to those provisions.

Existing constitutional provisions require that a statute that limits the right of access to the meetings of public bodies or the writings of public officials and agencies be adopted with findings demonstrating the interest protected by the limitation and the need for protecting that interest.

This bill would make legislative findings to that effect.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 11123 of the Government Code is
- 2 amended to read:

1 11123. (a) All meetings of a state body shall be open and
2 public and all persons shall be permitted to attend any meeting of
3 a state body except as otherwise provided in this article.

4 (b) (1) This article does not prohibit a state body from holding
5 an open or closed meeting by teleconference for the benefit of the
6 public and state body. The meeting or proceeding held by
7 teleconference shall otherwise comply with all applicable
8 requirements or laws relating to a specific type of meeting or
9 proceeding, including the following:

10 (A) The teleconferencing meeting shall comply with all
11 requirements of this article applicable to other meetings.

12 (B) The portion of the teleconferenced meeting that is required
13 to be open to the public shall be both audibly and visually
14 observable to the public at the location specified in the notice of
15 the meeting.

16 (C) If the state body elects to conduct a meeting or proceeding
17 by teleconference, it shall ~~post agendas~~ *as an agenda* ~~at all~~
18 ~~teleconference locations~~ *the designated primary physical meeting*
19 *location in the notice of the meeting where members of the public*
20 *may physically attend the meeting and participate*, and conduct
21 teleconference meetings in a manner that protects the rights of any
22 party or member of the public appearing before the state body.
23 ~~Each teleconference location shall be identified in the notice and~~
24 ~~agenda of the meeting or proceeding, and each teleconference~~
25 ~~location shall be accessible to the public.~~ The agenda shall provide
26 an opportunity for members of the public to address the state body
27 *via teleconference* directly pursuant to Section 11125.7 at each
28 teleconference location.

29 (D) All votes taken during a teleconferenced meeting shall be
30 by rollcall.

31 (E) The portion of the teleconferenced meeting that is closed
32 to the public may not include the consideration of any agenda item
33 being heard pursuant to Section 11125.5.

34 (F) At least one member of the state body shall be physically
35 present at the location specified in the notice of the meeting.

36 (2) For the purposes of this subdivision, “teleconference” means
37 a meeting of a state body, the members of which are at different
38 locations, connected by electronic means, through both audio and
39 video. This section does not prohibit a state body from providing
40 members of the public with additional locations in which the public

1 may observe or address the state body by electronic means, through
2 either audio or both audio and video.

3 (c) The state body shall publicly report any action taken and the
4 vote or abstention on that action of each member present for the
5 action.

6 SEC. 2. Section 11123.5 of the Government Code is amended
7 to read:

8 11123.5. (a) In addition to the authorization to hold a meeting
9 by teleconference pursuant to subdivision (b) of Section 11123,
10 any state body that is a board, commission, committee,
11 subcommittee, or similar multimember body may hold an open
12 meeting by teleconference as described in this section, provided
13 the meeting complies with all of the section's requirements and,
14 except as set forth in this section, it also complies with all other
15 applicable requirements of this article.

16 (b) A member of a state body as described in subdivision (a)
17 who participates in a teleconference meeting from a remote location
18 subject to this section's requirements shall be listed in the minutes
19 of the meeting.

20 (c) The state body shall provide notice to the public at least 24
21 hours before the meeting that identifies any member who will
22 participate remotely by posting the notice on its internet website
23 and by emailing notice to any person who has requested notice of
24 meetings of the state body under this article. The location of a
25 member of a state body who will participate remotely is not
26 required to be disclosed in the public notice or email and need not
27 be accessible to the public. The notice of the meeting shall also
28 identify the primary physical meeting location designated pursuant
29 to subdivision (e).

30 (d) This section does not affect the requirement prescribed by
31 this article that the state body post an agenda of a meeting at least
32 10 days in advance of the meeting. The agenda shall include
33 information regarding the physical meeting location designated
34 pursuant to subdivision (e), but is not required to disclose
35 information regarding any remote location.

36 (e) A state body described in subdivision (a) shall designate the
37 primary physical meeting location in the notice of the meeting
38 where members of the public may physically attend the meeting
39 and participate. A quorum of the members of the state body shall
40 be in attendance *via teleconference or in person physically* at the

1 primary physical meeting location, and members of the state body
2 participating remotely shall ~~not~~ count towards establishing a
3 quorum. All decisions taken during a meeting by teleconference
4 shall be by rollcall vote. The state body shall post the agenda at
5 the primary physical meeting location, but need not post the agenda
6 at a remote location.

7 (f) When a member of a state body described in subdivision (a)
8 participates remotely in a meeting subject to this section's
9 requirements, the state body shall provide a means by which the
10 public may remotely observe the meeting's proceedings, both
11 audibly and visually, including the members of the state body
12 participating remotely. The applicable teleconference phone
13 number or internet website, or other information indicating how
14 the public can access the meeting remotely, shall be in the 24-hour
15 notice described in subdivision (a) that is available to the public.

16 (g) Upon discovering that a means of remote access required
17 by subdivision (f) has failed during a meeting, the state body
18 described in subdivision (a) shall end or adjourn the meeting in
19 accordance with Section 11128.5. In addition to any other
20 requirements that may apply, the state body shall provide notice
21 of the meeting's end or adjournment on its internet website and
22 by email to any person who has requested notice of meetings of
23 the state body under this article. If the meeting will be adjourned
24 and reconvened on the same day, further notice shall be provided
25 by an automated message on a telephone line posted on the state
26 body's agenda, or by a similar means, that will communicate when
27 the state body intends to reconvene the meeting and how a member
28 of the public may observe the meeting, both audibly and visually.

29 (h) For purposes of this section:

30 (1) "Participate remotely" means participation in a meeting at
31 a location other than the physical location designated in the agenda
32 of the meeting.

33 (2) "Remote location" means a location other than the primary
34 physical location designated in the agenda of a meeting.

35 (3) "Teleconference" has the same meaning as in Section 11123.

36 (i) This section does not limit or affect the ability of a state body
37 to hold a teleconference meeting under another provision of this
38 article.

39 *SEC. 3. The Legislature finds and declares that Section 1 of*
40 *this act, which amends Section 11123 of the Government Code,*

1 *imposes a limitation on the public's right of access to the meetings*
2 *of public bodies or the writings of public officials and agencies*
3 *within the meaning of Section 3 of Article I of the California*
4 *Constitution. Pursuant to that constitutional provision, the*
5 *Legislature makes the following findings to demonstrate the interest*
6 *protected by this limitation and the need for protecting that*
7 *interest:*

8 *By removing the requirement for agendas to be placed at the*
9 *location of each public official participating in a public meeting*
10 *remotely, including from the member's private home or hotel room,*
11 *this act protects the personal, private information of public officials*
12 *and their families while preserving the public's right to access*
13 *information concerning the conduct of the people's business.*

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