

CALIFORNIA STATE BOARD OF BEHAVIORAL SCIENCES

BILL ANALYSIS

BILL NUMBER: SB 544

VERSION: AMENDED APRIL 27, 2023

AUTHOR: LAIRD

SPONSOR: CALIFORNIA COMMISSION ON AGING

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 by teleconferencing.

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 to it by that state body.
 - An advisory board, commission, committee, or subcommittee that consists of three or more persons and is created by formal action of 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 boards under the Department of Consumer Affairs (DCA) to meet at least two times each calendar year. Boards must meet at least once each calendar year in northern California, and once in southern California, in order to facilitate participation by the public and licensees. (Business and Professions Code (BPC) §101.7)

- 4) Defines a “meeting” to include any congregation of a majority of the members of a state body at the same time and place, to hear, discuss, or deliberate an item within its subject matter jurisdiction. (GC §11122.5(a))
- 5) 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))
- 6) Does not prohibit a state body from holding an open or closed meeting by teleconference if it otherwise complies with all requirements in law. (GC §11123(b))
- 7) Requires an open teleconferenced meeting to be audible to the public at the location specified in the meeting notice. (GC §11123(b))
- 8) 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.
- 9) 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))
- 10) Defines a “teleconference” as a meeting of a state body where the members are at different locations, connected by electronic means, through either audio or both audio and video. (GC §11123(b))
- 11) Requires a state body to provide notice at least 10 days prior to a meeting, which includes an agenda for that meeting. (GC §11125)
- 12) Temporarily waives some of the teleconferencing requirements for state bodies currently in law due to the COVID-19 State of Emergency, until July 1, 2023. (GC §11133)

This Bill:

- 1) Removes the requirement that a state body conducting a meeting by teleconference must post agendas at all teleconference locations, identify each teleconference location in the meeting notice and agenda, and make each

teleconference location accessible to the public. Instead, requires the state body conducting a teleconference meeting to do the following (GC §11123(b)(1)(C)):

- Provide a means for the public to remotely hear audio of the meeting, remotely observe the meeting, or attend the meeting by providing a teleconference phone number, website, and physical address for at least one site on the posted agenda. If available, this must include access equivalent to the access a member of the state body participating remotely would have.
 - The telephone number, website, and physical address to access or attend the meeting must be specified in the meeting notice.
- 2) The meeting agenda must provide an opportunity for members of the public to address the state body directly. (GC §11123(b)(1)(D))
 - 3) Instead of requiring at least one member of the state body to be physically present at the location specified in the notice of the meeting, amends the law to require at least one member or staff of the state body to be physically present at the location specified in the meeting notice. (GC §11123(b)(1)(G))
 - 4) Provides that the meeting notice and agenda shall not disclose information regarding a remote location from where a member is participating. (GC §11123(b)(1)(H))
 - 5) States that members of the public are entitled to exercise their right to directly address the state body during the teleconference meeting without having to submit public comments prior to the meeting or in writing. (GC §11123(b)(1)(I))
 - 6) Provides that upon discovering a required means of remote participation failed, the meeting must end and the state body must provide notice that the meeting ended on its website and via email to specified persons. If reconvening that same day, an automated message on a phone line on the state body's agenda, website, or similar must communicate when the state body intends to reconvene and how to hear or observe the meeting. (GC §11123(b)(1)(J))
 - 7) Provides that a remote location where a member of a state body participates in a meeting does not need to be accessible to the public. (GC §11123(b)(2)(B))
 - 8) Requires that a state body that holds a meeting through teleconference and allows members of the public to observe and address the meeting via telephone or other electronic means, that it must do both of the following (GC §11123(c)):
 - Implement a procedure to receive and swiftly resolve reasonable modification or accommodation requests from individuals with disabilities, consistent with the federal Americans with Disabilities Act of 1990. Any doubt must be resolved in favor of accessibility.

- Advertise this procedure for reasonable modification or accommodation requests each time notice is given of how the public may observe and comment.
- 9) Provides that if a state body member attends a meeting by teleconference from a remote location, that member must disclose if there are any other individuals age 18 or older present in the room with them at the remote location, and the general nature of the relationship. (GC §11123(e))
- 10) Defines “participating remotely” as participating in a meeting at a location other than the physical location designated in the agenda of the meeting. (GC §11123(f))

Comment:

- 1) **Author’s Intent.** The author states that the intent of this bill is to promote equity and public participation through virtual meetings, while ensuring the personal safety of board members. In their fact sheet for the bill, they note the following:

“...The Bagley-Keene Open Meeting Act, initially passed in 1967, establishes the rules for meetings of state bodies. These rules are intended to ensure public access and allow input on meetings of state boards and commissions. In response to the COVID-19 pandemic, Governor Newsom issued an executive order in March 2020 permitting state bodies to hold meetings virtually, without requiring a physical location or the posting of the addresses of the teleconference location of attending board members as currently required under the Bagley-Keene Act. What started as an experiment to promote health and safety during the COVID-19 pandemic has proven to be successful and enhances public participation while still ensuring sufficient access to state hearings. Virtual meetings have improved access for Californians that face barriers to physical attendance, such as those living in different areas of the state, individuals with limited mobility, caretakers, and more. Members of the public without the economic means to travel could still provide public comment.

The Governor’s executive order waiver is set to expire on June 30, 2023. Beginning in July, state bodies holding virtual meetings will again be required to post the physical location of all attending board and commission members. This poses personal safety concerns since remote attendance of board and commission members is often a private residence or hotel room, and members would also be required to provide the public with physical access to the remote meeting location. In addition, private residences may not meet Americans with Disabilities Act (ADA) requirements.”

- 2) **Board Utilization of Teleconference.** Prior to the COVID-19 pandemic, the Board occasionally held a meeting via teleconference, but most meetings were held in-person. Typically, the board met twice a year in northern California, and twice in southern California. Any teleconference meetings held utilized a telephone conference call line, rather than a video platform. Per the law, members

utilizing teleconference needed to list their physical location in the agenda and allow it to be accessible to the public, even if that was a home address.

Due to the COVID-19 pandemic, the Board transitioned to using a video platform for all meetings. This has increased the ability of the public to participate in the Board's meetings. During the pandemic, due to the State of Emergency, several components of the Bagley-Keene Open Meeting Act were waived. However, those waivers are ending in July 2023.

- 3) **Physical Location Required for Board Meetings.** As written in this bill, if the Board held a board meeting or committee meeting by teleconference, it would always be required to have a physical location for each meeting where the public could attend and participate. At least one board member or staff member would need to be physically present at that location.
- 4) **Fiscal Impact.** Staff expects a cost savings from this bill due to some reduced travel costs if some Board members participate remotely. However, there is still a requirement to have a physical location, and Board members can opt to participate in-person. Therefore, it is difficult to estimate an exact cost savings per meeting.
- 5) **Previous Legislation.**
 - AB 1733 (Quirk, 2022) was a previous attempt to modernize the Bagley-Keene Open Meeting Act requirements for state bodies conducting a meeting to include a teleconference component. AB 1733 died in the Assembly Governmental Organization Committee.
 - AB 885 (Quirk, 2021) also attempted to modernize the Bagley-Keene Open Meeting Act to better incorporate teleconferencing. AB 885 died in the Assembly.
- 6) **Support and Opposition.**

Support

- California Commission on Aging (Sponsor)
- Little Hoover Commission
- California Acupuncture Board
- California Association of Area Agencies on Aging
- California Senior Legislature
- Health Officers Association of California

Opposition

- ACLU California Action
- Cal Aware
- California Broadcasters Association
- California News Publishers Association

- First Amendment Coalition
- Howard Jarvis Taxpayers Association

7) History.

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| 04/27/23 | Read second time and amended. Re-referred to Com. on APPR. |
| 04/26/23 | From committee: Do pass as amended and re-refer to Com. on APPR. (Ayes 9. Noes 0.) (April 25). |
| 04/13/23 | Set for hearing April 25. |
| 04/11/23 | From committee: Do pass and re-refer to Com. on JUD. (Ayes 13. Noes 1.) (April 11). Re-referred to Com. on JUD. |
| 04/06/23 | Set for hearing April 11. |
| 03/29/23 | Re-referred to Coms. on G.O. and JUD. |
| 03/20/23 | From committee with author's amendments. Read second time and amended. Re-referred to Com. on RLS. |
| 02/22/23 | Referred to Com. on RLS. |
| 02/16/23 | From printer. May be acted upon on or after March 18. |
| 02/15/23 | Introduced. Read first time. To Com. on RLS. for assignment. To print. |

AMENDED IN SENATE APRIL 27, 2023

AMENDED IN SENATE MARCH 20, 2023

SENATE BILL

No. 544

Introduced by Senator Laird

February 15, 2023

An act to amend Section 11123 of the Government Code, relating to state government.

legislative counsel's digest

SB 544, as amended, Laird. Bagley-Keene Open Meeting Act: teleconferencing.

Existing law, the Bagley-Keene Open Meeting Act, requires, with specified exceptions, that all meetings of a state body be open and public and all persons be permitted to attend any meeting of a state body. The act authorizes meetings through teleconference subject to specified requirements, including, among others, that the state body post agendas at all teleconference locations, that each teleconference location be identified in the notice and agenda of the meeting or proceeding, that each teleconference location be accessible to the public, that the agenda provide an opportunity for members of the public to address the state body directly at each teleconference location, and that at least one member of the state body be physically present at the location specified in the notice of the meeting.

Existing law, until July 1, 2023, authorizes, subject to specified notice and accessibility requirements, a state body to hold public meetings through teleconferencing and suspends certain requirements of the act, including the above-described teleconference requirements.

This bill would amend existing law that will remain operative after July 1, 2023, to remove indefinitely the teleconference requirements

that a state body post agendas at all teleconference locations, that each teleconference location be identified in the notice and agenda of the meeting or proceeding, and that each teleconference location be accessible to the public. The bill would require a 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 bill would require any notice required by the act to specify the applicable teleconference telephone number, internet website or other online platform, and physical address indicating how the public can access the meeting remotely and in person. The bill would revise existing law to no longer require that members of the public have the opportunity to address the state body directly at each teleconference location, but would continue to require that the agenda provide an opportunity for members of the public to address the state body directly. The bill would require a member or staff to be physically present at the location specified in the notice of the meeting.

This bill would provide that it does not affect prescribed existing notice and agenda requirements and would require the state body to post an agenda on its internet website and, on the day of the meeting, at any physical meeting location designated in the notice of the meeting. The bill would prohibit the notice and agenda from disclosing information regarding any remote location from which a member is participating and define “remote location” for this purpose. The bill would provide that members of the public shall be entitled to exercise their right 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 a state body, upon discovering that a means of remote participation required by the bill has failed during a meeting and cannot be restored, to end or adjourn the meeting in accordance with prescribed adjournment and notice provisions, including information about reconvening.

This bill would require a state body that holds a meeting through teleconferencing pursuant to the bill and allows members of the public to observe and address the meeting telephonically or otherwise electronically to implement and advertise, as prescribed, a procedure

for receiving and swiftly resolving requests for reasonable modification or accommodation from individuals with disabilities, consistent with the federal Americans with Disabilities Act of 1990.

This bill would require a member of a state body who attends a meeting by teleconference from a remote location to disclose whether any other individuals 18 years of age or older are present in the room at the remote location with the member and the general nature of the member’s relationship with any such individuals.

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:

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

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

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

14 (B) The portion of the teleconferenced meeting that is required
15 to be open to the public shall be audible to the public at the location
16 specified in the notice of the meeting.

17 (C) If the state body elects to conduct a meeting or proceeding
18 by teleconference, it shall conduct teleconference meetings in a
19 manner that protects the rights of any party or member of the public
20 appearing before the state body. The state body shall provide a
21 means by which the public may remotely hear audio of the meeting,

1 remotely observe the meeting, or attend the meeting by providing
2 on the posted agenda a teleconference telephone number, an
3 internet website or other online platform, and a physical address
4 for at least one site, including, if available, access equivalent to
5 the access for a member of the state body participating remotely.
6 The applicable teleconference telephone number, internet website
7 or other online platform, and physical address indicating how the
8 public can access the meeting remotely and in person shall be
9 specified in any notice required by this article.

10 (D) The agenda shall provide an opportunity for members of
11 the public to address the state body directly pursuant to Section
12 11125.7.

13 (E) All votes taken during a teleconferenced meeting shall be
14 by rollcall.

15 (F) The portion of the teleconferenced meeting that is closed to
16 the public may not include the consideration of any agenda item
17 being heard pursuant to Section 11125.5.

18 (G) At least one member or staff of the state body shall be
19 physically present at the location specified in the notice of the
20 meeting.

21 *(H) This section does not affect the requirement prescribed by*
22 *this article that the state body post an agenda of a meeting in*
23 *accordance with the applicable notice requirements of this article,*
24 *including Section 11125, requiring the state body to post an agenda*
25 *of a meeting at least 10 days in advance of the meeting, Section*
26 *11125.4, applicable to special meetings, and Sections 11125.5 and*
27 *11125.6, applicable to emergency meetings. The state body shall*
28 *post the agenda on its internet website and, on the day of the*
29 *meeting, at any physical meeting location designated in the notice*
30 *of the meeting. The notice and agenda shall not disclose*
31 *information regarding any remote location from which a member*
32 *is participating.*

33 *(I) Members of the public shall be entitled to exercise their right*
34 *to directly address the state body during the teleconferenced*
35 *meeting without being required to submit public comments prior*
36 *to the meeting or in writing.*

37 *(J) Upon discovering that a means of remote participation*
38 *required by this section has failed during a meeting and cannot*
39 *be restored, the state body shall end or adjourn the meeting in*
40 *accordance with Section 11128.5. In addition to any other*

1 *requirements that may apply, the state body shall provide notice*
2 *of the meeting's end or adjournment on the state body's internet*
3 *website and by email to any person who has requested notice of*
4 *meetings of the state body by email under this article. If the meeting*
5 *will be adjourned and reconvened on the same day, further notice*
6 *shall be provided by an automated message on a telephone line*
7 *posted on the state body's agenda, internet website, or by a similar*
8 *means, that will communicate when the state body intends to*
9 *reconvene the meeting and how a member of the public may hear*
10 *audio of the meeting or observe the meeting.*

11 (2) For the purposes of this subdivision, ~~“teleconference”~~ both
12 of the following definitions shall apply:

13 (A) “Teleconference” means a meeting of a state body, the
14 members of which are at different locations, connected by
15 electronic means, through either audio or both audio and video.
16 This section does not prohibit a state body from providing members
17 of the public with additional locations in which the public may
18 observe or address the state body by electronic means, through
19 either audio or both audio and video.

20 (B) “Remote location” means a location from which a member
21 of a state body participates in a meeting other than any physical
22 meeting location designated in the notice of the meeting. Remote
23 locations need not be accessible to the public.

24 (c) If a state body holds a meeting through teleconferencing
25 pursuant to this section and allows members of the public to
26 observe and address the meeting telephonically or otherwise
27 electronically, the state body shall also do both of the following:

28 (1) Implement a procedure for receiving and swiftly resolving
29 requests for reasonable modification or accommodation from
30 individuals with disabilities, consistent with the federal Americans
31 with Disabilities Act of 1990 (42 U.S.C. Sec. 12101 et seq.), and
32 resolving any doubt whatsoever in favor of accessibility.

33 (2) Advertise that procedure each time notice is given of the
34 means by which members of the public may observe the meeting
35 and offer public comment.

36 (d) The state body shall publicly report any action taken and
37 the vote or abstention on that action of each member present for
38 the action.

39 (e) *If a member of a state body attends a meeting by*
40 *teleconference from a remote location, the member shall disclose*

1 *whether any other individuals 18 years of age or older are present*
 2 *in the room at the remote location with the member, and the*
 3 *general nature of the member's relationship with any such*
 4 *individuals.*

5 ~~(e)~~

6 (f) For purposes of this section, “participate remotely” means
 7 participation in a meeting at a location other than the physical
 8 location designated in the agenda of the meeting.

9 SEC. 2. The Legislature finds and declares that Section 1 of
 10 this act, which amends Section 11123 of the Government Code,
 11 imposes a limitation on the public's right of access to the meetings
 12 of public bodies or the writings of public officials and agencies
 13 within the meaning of Section 3 of Article I of the California
 14 Constitution. Pursuant to that constitutional provision, the
 15 Legislature makes the following findings to demonstrate the interest
 16 protected by this limitation and the need for protecting that interest:

17 (a) By removing the requirement for agendas to be placed at
 18 the location of each public official participating in a public meeting
 19 remotely, including from the member's private home or hotel
 20 room, this act protects the personal, private information of public
 21 officials and their families while preserving the public's right to
 22 access information concerning the conduct of the people's business.

23 (b) During the COVID-19 public health emergency, audio and
 24 video teleconference were widely used to conduct public meetings
 25 in lieu of physical location meetings, and those public meetings
 26 have been productive, increased public participation by all
 27 members of the public regardless of their location and ability to
 28 travel to physical meeting locations, increased the pool of people
 29 who are able to serve on these bodies, protected the health and
 30 safety of civil servants and the public, and have reduced travel
 31 costs incurred by members of state bodies and reduced work hours
 32 spent traveling to and from meetings.

33 (c) Conducting audio and video teleconference meetings
 34 enhances public participation and the public's right of access to
 35 meetings of the public bodies by improving access for individuals
 36 that often face barriers to physical attendance.

O