

SENATE JUDICIARY COMMITTEE
Senator Thomas Umberg, Chair
2023-2024 Regular Session

SB 544 (Laird)
Version: March 20, 2023
Hearing Date: April 25, 2023
Fiscal: Yes
Urgency: No
AM

SUBJECT

Bagley-Keene Open Meeting Act: teleconferencing

DIGEST

This bill removes, indefinitely, 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 requires state bodies to provide a means by which the public may remotely hear audio of the meeting, remotely observe the meeting, or attend the meeting, as specified, and requires the agenda to provide an opportunity for the public to address the state body directly. The bill provides that one staff or member needs to be physically present at the physical location specified in the meeting, as opposed to existing law which requires a member to be present.

EXECUTIVE SUMMARY

The Bagley-Keene Open Meeting Act (Bagley-Keene) protects public access to meetings of state bodies. During the COVID-19 pandemic, the need for social distancing made the usual practices for public meetings under Bagley-Keene – in particular, having people group together in indoor spaces – impossible to continue. Governor Gavin Newsom, as part of a slew of emergency orders issued in response to the pandemic, suspended many of the requirements under Bagley-Keene for teleconferenced meetings. This bill seeks to indefinitely remove certain requirements under Bagley-Keene related to teleconference meetings that were waived under the Governor’s Executive Order.

The bill is sponsored by the California Commission on Aging. It is supported by various state entities. It is opposed by a coalition comprised of civil rights and community organizations and the California News Publishers Association. The bill passed the Senate Governmental Organization Committee on a vote of 13 to 1.

PROPOSED CHANGES TO THE LAW

Existing law:

- 1) Provides, pursuant to the California Constitution, that the people have the right of access to information concerning the conduct of the people's business, and, therefore, the meetings of public bodies and the writings of public officials and agencies are required to be open to public scrutiny. (Cal. const. art. I, § 3(b)(1).)
 - a) Requires a statute to be broadly construed if it furthers the people's right of access, and narrowly construed if it limits the right of access. (Cal. const. art. I, § 3(b)(1).)
 - b) Requires a statute that limits the public's right of access to be adopted with findings demonstrating the interest protected by the limitation and the need for protecting that interest. (Cal. const. art. I, § 3(b)(1).)
- 2) Establishes the Bagley-Keene Act, which requires state bodies to conduct their business in open public meetings, except as provided by the Act, and establishes requirements and procedures for such meetings. (Gov. Code § 11120 et seq.)¹
 - a) "State bodies" covered by the Bagley-Keene Act include every state board, commission or body created by statute or required by law to conduct official meetings, every commission created by executive order, any board or body exercising the authority of a state body by delegation, any advisory body created by formal action of a state body, any state body that is supported by public funds and which a member of a state body serves in their official capacity, and the State Bar of California. (§ 11121.)
 - b) "State bodies" do not include specified legislative agencies, agencies subject to the Brown Act, and certain educational and health-related agencies. (§ 11121.1.)
- 3) Authorizes state bodies subject to the Bagley-Keene Act to provide a teleconferencing option – which may be via audio or audiovisual means – for its meetings for the benefit of the public, subject to certain requirements including that:
 - a) The meeting must be audible to the public at the location specified in the notice of the meeting.
 - b) The agenda must provide an opportunity for members of the public to address the legislative body at each teleconference location.
 - c) All votes must be taken via rollcall.
 - d) At least one member of the state body must be physically present at the location specified in the notice of the meeting. (§ 11123.)
- 4) Requires, on and after July 1, 2030, in addition to the above requirements in 3) that:
 - a) The legislative body must post agendas at all teleconference locations.

¹ All further references are to the Government Code unless specified otherwise.

- b) Each teleconference location must be identified in the notice and agenda of the meeting or proceeding.
 - c) Each teleconference location must be accessible to the public.
- 5) Authorizes state advisory boards and similar advisory bodies to hold a meeting via teleconference, without posting a member's remote location on the agenda or having the location that the member is participating from accessible by the public, if it complies with the following requirements:
- a) A member participating remotely must be listed in the minutes of the meeting.
 - b) The state body must provide public notice at least 24 hours before the meeting that identifies the member(s) participating remotely and the primary physical meeting location; the body need not disclose the remote locations.
 - c) The state body must designate a primary physical location and a quorum of the members must be in attendance at the primary physical meeting location; the remote members do not count towards establishing a quorum.
 - d) The state body must provide a means by which the public may remotely hear audio of, or observe, the meeting, with access equal to the members of the state body participating remotely. Instructions for remote access must be included in the 24-hour meeting notice.
 - e) Upon discovering that a provided means of remote access has failed, the body must end or adjourn the meeting and provide notice regarding when the state body will reconvene. (§ 11123.5.)

This bill:

- 1) Removes, indefinitely, the following existing requirements of a state body when they choose to hold a meeting via teleconference:
 - a) that that a state body post agendas at all teleconference locations;
 - b) that each teleconference location be identified in the notice and agenda of the meeting or proceeding; and
 - c) that each teleconference location be accessible to the public.
- 2) Requires a state body, if conducting a meeting via teleconference, to:
 - a) 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.
 - b) Implement 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 (42 U.S.C.

Sec. 12101 et seq.), and resolving any doubt whatsoever in favor of accessibility.

- 3) Defines “participate remotely” as participation in a meeting at a location other than the physical location designated in the agenda of the meeting.
- 4) States findings and declarations of the Legislature regarding the imposition of a limitation on the public’s right of access to the meetings of public bodies or the writings of public officials.

COMMENTS

1. Stated need for the bill

The author writes:

In response to the COVID-19 pandemic and the widespread shutdown, the Governor signed an executive order to provide flexibility so state boards and commissions so they could continue to serve Californians remotely and safely.

Although meant to be temporary, we saw significant benefits of remote meetings, such as increased participation and reduced operating costs to the state.

Senate Bill 544 codifies the Governor’s Executive Order allowing state boards and commissions the opportunity to continue holding virtual meetings without being required to list the private addresses of each remote member or provide public access to private locations. The additional flexibility and safeguards may also help attract and retain appointees, who provide invaluable perspective. This bill will promote equity and public participation by removing barriers to Californians that experience challenges attending physical meetings, such as people with disabilities, caretakers, seniors, low-income individuals, and those living in rural or different areas of the state. SB 544 will empower California voices across the state.

2. Bagley-Keene guarantees public access to the open and public meetings of state bodies

Bagley-Keene generally requires state bodies to conduct their meetings openly and make them accessible to the public. A state body includes boards, commissions, committees, councils, and any other public agency created by state statute or executive order, with some exceptions, and the State Bar. (§ 11121.) The law does not apply to individual officials, advisory committees with no decision-making authority, or the California State Legislature.

The law also requires state bodies to provide advance notice of their meetings and agendas and to allow public comments on matters under consideration. (Gov. Code § 11125.) The act includes certain exceptions, such as closed sessions for discussing personnel issues or pending litigation, to protect the privacy and legal interests of individuals and the state. (§ 11126.)

State bodies must provide at least ten days' notice before a meeting, specifying the time and location, and post an agenda containing a brief description of each item to be discussed or acted upon. (§ 11125.) The agenda must be made available to the public, and state bodies cannot discuss or take action on items not listed on the agenda, with limited exceptions for emergency situations. (§ 11125.) State bodies must conduct their meetings openly, ensuring that members of the public can attend and participate without any restrictions based on race, gender, disability, or other discriminatory factors. (§ 11123.) The act also requires state bodies to provide reasonable accommodations for individuals with disabilities, ensuring accessibility to meetings and materials. (§ 11123.1.) The public has the right to address state bodies on any agenda item before or during the meeting. (§ 11125.7.) State bodies must provide opportunities for public comment and cannot prohibit criticism of their policies, procedures, or actions. (*Id.*) They may, however, impose reasonable time limits on public comments to maintain order and facilitate the conduct of business. (*Id.* at subd. (b).)

3. Changes to how a state body can conduct meetings via teleconference

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 all those attending – as is generally required under Bagley-Keene. The waiver of these requirements was extended through July 1, 2023 in SB 189 (Senate Committee on Budget, Ch. 48, Stats. 2022). At the expiration of this waiver, state bodies desiring to utilize virtual meetings will again be required to post the physical location of all members attending via teleconference and provide public access to that location. The author and sponsor of the bill argue that these existing requirements potentially put members of state bodies at risk by exposing their private addresses to the public and requiring public access the member's private residence or hotel.

To address this concern the bill would indefinitely remove the following requirements under Bagley-Keene when a state body elects to hold a meeting via teleconference:

- that each teleconference location be identified in the notice and agenda of the meeting or proceeding;
- that that a state body post agendas at all teleconference locations; 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. The access should be equivalent to the access for a member of the state body participating remotely, if available. 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 must be specified in any notice required under Bagley-Keene. The bill defines “participate remotely” as participation in a meeting at a location other than the physical location designated in the agenda of the meeting. The bill also changes the existing requirement that at least one member of the state body be physically present at a location specified in the agenda where the public can attend to allow for only a staff person of the state body to be present at the physical location.

The bill would require that if a state body holds a meeting through teleconferencing and allows members of the public to observe and address the meeting telephonically or otherwise electronically, the state body must implement 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 (42 U.S.C. Sec. 12101 et seq.). The state body must resolve any doubt whatsoever in favor of accessibility, and advertise these procedures each time notice is given of the means by which members of the public may observe the meeting and offer public comment.

4. Limitation on access to public meetings

The bill’s provisions would limit the public’s access to public meetings of state bodies by allowing a state body to hold a teleconference meeting without allowing the public to access the locations of where members are participating from, providing notice of where they are participating from, and also not requiring any member of the state body to be present at the one physical location required to be provided to the public. The author and sponsor argue that the Governor’s Executive order, which waived certain requirements related to teleconference meetings, was productive, increased public participation by all members of the public regardless of their location and ability to travel to physical meeting locations, increased the pool of people who are able to serve on these bodies, protected the health and safety of civil servants and the public, and reduced travel costs incurred by members of state bodies and reduced work hours spent traveling to and from meetings. They also argue that conducting audio and video teleconference meetings enhances public participation and the public’s right of access to meetings of the public bodies by improving access for individuals that often face barriers to physical attendance.

The bill is opposed unless amended by a coalition comprised of civil rights organizations, community organizations, and the California News Publishers Association. They are deeply concerned with the fact that a state body would be able to hold a meeting and there would be no way for the public to physically address any member of the body. They write:

Officials who are in the same room as their constituents can't just turn off their cameras or turn down the volume on criticism. SB 544 jeopardizes this public access by permitting public officials to "phone it in" and meet entirely telephonically if they so choose. This forces the public to try to follow along with zero visual cues, guessing at speakers' voices and addressing public officials by audio only.

For journalists who do the important work of informing their communities, SB 544 makes newsgathering even more challenging. A primary newsgathering tool is being able to approach officials, see how decision-makers engage with the public, and observe how officials interact with one another on the dais. By allowing bodies to meet remotely indefinitely, SB 544 significantly hampers the ability of reporters and photographers to provide valuable information to their readers, leaving Californians less informed.

The opposition coalition is seeking an amendment to require a physical quorum of members in one location, which would be open to the public, with other members of the body being able to join remotely. They point to the provisions in AB 2449 (Rubio, Ch. 285, Stats. 2022) as an example of this being done in the context of open meetings requirements for legislative bodies of local governments. This is also the requirement under Bagley-Keene as it relates to advisory boards and similar advisory bodies under Section 11123.5. They also seek several other guardrails around technology disruptions, public comment, and a requirement that the state body provide the public with both call-in and video access. Many of the guardrails they are requesting were included in SB 1733 (Quirk, 2022), which was never set for a hearing in the Assembly Committee on Governmental Organization, and AB 2449.

5. Potential Amendments

To address some, but not all, of the concerns raised by the opposition the author may wish to amend the bill to:

- Make it clear that members of the public are 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.
- That upon discovering that a means of remote participation required by the bill has failed during a meeting and cannot be restored, the state body must end or adjourn the meeting.

- Define “remote location” to 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 need not be accessible to the public.
- Requiring a member participating remotely 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.
- Clarifying that an agenda is to be posted pursuant to other requirements under Bagley-Keene.

The specific amendments are:²

Amendment 1

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.

Amendment 2

Upon discovering that a means of remote participation required by this section has failed during a meeting and cannot be restored, the state body shall end or adjourn the meeting in accordance with Section 11128.5. In addition to any other requirements that may apply, the state body shall provide notice of the meeting’s end or adjournment on the state body’s internet website and by email to any person who has requested notice of meetings of the state body by email under this article. If the meeting will be adjourned and reconvened on the same day, further notice shall be provided by an automated message on a telephone line posted on the state body’s agenda, internet website, or by a similar means, that will communicate when the state body intends to reconvene the meeting and how a member of the public may hear audio of the meeting or observe the meeting.

Amendment 3

This section does not affect the requirement prescribed by this article that the state body post an agenda of a meeting in accordance with the applicable notice requirements of this article, including Section 11125, requiring the state body post an agenda of a meeting at least 10 days in advance of the meeting, Section 11125.4, applicable to special meetings, and Sections 11125.5 and 11125.6, applicable to emergency meetings. The state body shall post the agenda on its internet website and, on the day of the meeting,

² The amendments may also include technical, nonsubstantive changes recommended by the Office of Legislative Counsel.

at any physical meeting location designated in the notice of the meeting. The notice and agenda shall not disclose information regarding any remote location from which a member is participating.

Amendment 4

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

Amendment 5

If a member of a state body attends a meeting by teleconference from a remote location, the member shall 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.

6. Statements in support

The sponsor of the bill, the California Commission on Aging, writes:

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. [...]

Senate Bill 544 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.

7. Statements in opposition

The opposition coalition writes they are opposed 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.

SUPPORT

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

OPPOSITION

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

RELATED LEGISLATION

Pending Legislation:

SB 411 (Portantino, 2023) among other things, authorizes a legislative body of a local agency to use alternate teleconferencing provisions similar to the emergency provisions indefinitely and without regard to a state of emergency, as specified. This bill is currently pending in this Committee.

SB 537 (Becker, 2023) among other things, authorizes certain legislative bodies of local agencies to use alternate teleconferencing provisions similar to the emergency

provisions indefinitely and without regard to a state of emergency, as specified. This bill is currently pending in this Committee.

AB 817 (Pacheco, 2023) among other things, authorizes a subsidiary state bodies to use alternative teleconferencing provisions similar to the emergency provisions indefinitely and without regard to a state of emergency, as specified. This bill is pending in the Assembly Local Government Committee.

AB 1275 (Arambula, 2023) authorizes the recognized statewide community college student organization and other student-run community college organizations to use teleconferencing for their meetings without having to post agendas at all locations, identify each location in the agenda, make each location accessible to the public, and require that a quorum of the student organization's members participate from a singular physical location. This bill is pending in the Assembly Local Government Committee.

Prior Legislation:

SB 189 (Committee on Budget and Fiscal Review, Ch. 48, Stats. 2022) 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 1733 (Quirk, 2022) would have updated Bagley-Keene to accommodate teleconferenced meetings as a standard practice, as provided. This bill was never set for a hearing in the Assembly Governmental Organization Committee.

AB 2449 (Rubio, Ch. 285, Stats. 2022) allows, until January 1, 2026, members of a legislative body of a local agency to use teleconferencing without noticing their teleconference locations and making them publicly accessible under certain conditions.

PRIOR VOTES:

Senate Governmental Organization Committee (Ayes 13, Noes 1)
