

CALIFORNIA PRIVACY PROTECTION AGENCY

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**M e m o r a n d u m**

Date: July 12, 2023

To: California Privacy Protection Agency Board
(Meeting of July 14, 2023)

From: Maureen Mahoney, Deputy Director of Policy & Legislation

Subject: Analysis and Recommended Agency Position on SB 544, Bagley-Keene Open Meeting Act: teleconferencing, as proposed to be amended on July 12, 2023 (Laird)

Brief Summary of Bill and Status

SB 544 (version 4/27/23), introduced by Senator John Laird, would amend the Bagley-Keene Open Meeting Act (Bagley-Keene) to allow state bodies to conduct public meetings exclusively via teleconference. The bill has been approved by the California Senate.¹ On July 12, 2023, the author agreed to amendments proposed by the California Assembly Committee on Governmental Organization to (1) sunset the measure on January 1, 2026; and (2) to require that a “majority of the members (quorum) of the state body” be “present at one physical location for a minimum of a fifty percent of the meetings of the state body each year.”²

Overview

The Bagley-Keene Open Meeting Act (Bagley-Keene) includes a number of requirements relating to public meetings of state bodies such as the California Privacy Protection Agency (CPPA or Agency) Board. Under Bagley-Keene, public meetings may be held through teleconference, but Bagley-Keene requires that members of the public be able to address the Board at each teleconference location, and at least one member of the Board be physically present at the location specified in the meeting notice.

In response to the COVID-19 emergency, on March 17, 2020, Governor Newsom signed an Executive Order that permitted state bodies to hold meetings exclusively by teleconference,³ which was temporarily codified in Bagley-Keene,⁴ and extended in January 2022.⁵ In June 2022, the Governor signed SB 189, which included a temporary exemption to Bagley-Keene allowing public meetings to be held by teleconference.⁶ The exemption is in effect until July 1, 2023.

¹ SB 544 (2023), https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202320240SB544.

² SB 544, Assembly Governmental Organization Committee Bill Analysis at 7 (July 11, 2023), https://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill_id=202320240SB544.

³ State of California Executive Order N-29-20 (March 17, 2020), <https://www.gov.ca.gov/wp-content/uploads/2020/03/3.17.20-N-29-20-EO.pdf>.

⁴ 2021 Cal. Stats. Ch. 165 (AB 361).

⁵ State of California Executive Order N-1-22 (Jan. 5, 2022), <https://www.gov.ca.gov/wp-content/uploads/2022/01/1.5.22-Bagley-Keene-waiver-EO.pdf>.

⁶ 2022 Cal. Stats. Ch. 48 (SB 189).

This bill would amend existing law to require, for each public meeting, that the Board provide 1) a teleconference telephone number, 2) an internet website or online platform, and 3) a physical address of at least one site where the public may go to participate. The bill states that at least one staff member must be present at the physical location. Under the bill, if the teleconference line or other means of remote participation fails during the meeting, the Board must end or adjourn the meeting and provide information about reconvening.

For state bodies conducting meetings remotely, the bill requires that they implement a procedure for resolving requests for reasonable modification or accommodation for individuals with disabilities, consistent with the Americans with Disabilities Act⁷ and advertise that procedure in every meeting notice. The bill would require that any Board member joining the meeting from a remote location disclose whether anyone 18 or over is present in the room and disclose the nature of their relationship.

Recently-accepted amendments to the bill would sunset the measure on January 1, 2026 and require that a quorum of members of the board be present at the physical location for at least half of the meetings of the state body each year.⁸

Analysis

The Agency Board was established in November 2020 and meets regularly pursuant to the Bagley-Keene Open Meetings Act. Since its inception, the Board has met via online video conference, pursuant to Governor Newsom’s Executive Order and the subsequent temporary codification and extension. After the expiration of the extension in spring 2022, the Board held in-person meetings. The Board resumed online meetings after SB 189 went into effect July 1, 2022.

The Agency is committed to fostering robust public engagement in its meetings. In staff’s view, the April 27, 2023 version of the bill is the best way to ensure meaningful participation, based on the high public participation in our online public meetings. Especially since COVID-19 has continued to make it difficult to meet in person, particularly for people who are at higher medical risk, it is appropriate that state agencies have the discretion to hold virtual public meetings.

Last year, the Agency Board has held two days of online pre-rulemaking Informational Sessions, and the Agency welcomed pre-rulemaking comments from the public over three days of online Stakeholder Sessions. All of these meetings were well-attended by remote videoconference participants—with at least one hundred, and often hundreds of attendees at every meeting—and allowed input from stakeholders from all over the state. In contrast, few members of the public have attended any of the in-person meetings or hearings the Agency has held.

When the Board is required to meet in person, it is more difficult to foster meaningful participation. For example, at the May 26, 2022 CPPA Board meeting, held in a state building in Oakland, three members of the public showed up in person while nearly 200 people attended online via videoconference. It is not surprising that many more members of the public chose to attend online, because it is much easier for

⁷ 42 U.S.C. § 12101 et seq.

⁸ SB 544, Assembly Governmental Organization Committee Bill Analysis at 7 (July 11, 2023), https://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill_id=202320240SB544.

those juggling work, family, and other responsibilities to attend remotely. Further, it allows Californians who live in other parts of the state to join.

The in-person meeting requirement also makes it difficult for the Agency to proceed with its work on behalf of the public. In addition to the logistical and staffing challenges this creates for our brand-new Agency with limited resources, in person-meeting requirements also compromise Board diversity. Board service becomes challenging for those with higher medical risks, childcare needs, or transportation difficulties. In addition, if a Board member tests positive for the COVID-19 virus, then the Board may have to cancel the meeting, and be unable to move forward with important matters affecting the public. In-person meeting requirements create significant risk for the public, the Agency staff, and Board.

The state can still rely on commercial platforms like Zoom and Webex for public meetings without compromising user privacy. The Agency allows members of the public to join meetings held via online video conference pseudonymously without identifying themselves by name or log in. In addition, Agency staff use a modified, more privacy-preserving method of embedding video content for video streaming platforms such as YouTube on the CPPA website.⁹ This privacy-preserving implementation was created in the 2000s and allows government agencies to take advantage of the platform while reducing the privacy exposure of its viewers. Additionally, under the California Consumer Privacy Act (CCPA), members of the public can request that commercial meeting platforms like Zoom and Webex stop the sale or delete information associated with their attendance using these platforms.

Recommendation

Support if amended to remove the proposed requirement that a “majority of the members (quorum) of the state body” be “present at one physical location for a minimum of a fifty percent of the meetings of the state body each year.”¹⁰

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⁹ YouTube Help, Turn on privacy enhanced mode, (last visited June 16, 2022), <https://support.google.com/youtube/answer/171780?hl=en-GB#zippy=%2Cturn-on-privacy-enhanced-mode>.

¹⁰ SB 544, Assembly Governmental Organization Committee Bill Analysis at 7 (July 11, 2023), https://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill_id=202320240SB544.