

Date of Hearing: April 18, 2018

ASSEMBLY COMMITTEE ON GOVERNMENTAL ORGANIZATION

Adam Gray, Chair

AB 2958 (Quirk) – As Amended April 12, 2018

SUBJECT: State bodies: meetings: teleconference

SUMMARY: Makes changes to the Bagley-Keene Open Meeting Act (Bagley-Keene) relating to meetings held by an advisory state body via teleconference. Specifically, **this bill:**

1. Requires all the following to apply to a meeting held by teleconference by an advisory board, advisory commission, advisory committee, advisory subcommittee, or similar multimember advisory body that does not have rulemaking or voting authority:
 - a) A member of an advisory state body participating by teleconference must be listed in the minutes of the meeting and shall provide notice of his or her participation by teleconference at least 24 hours before the meeting.
 - b) Requires the advisory state body holding a meeting via teleconference to designate a primary physical meeting location where participants may physically attend the meeting and participate. Requires at least one member of the state body to be in attendance at the primary physical meeting location.
 - c) The teleconference phone number and, if applicable, the Internet Web site or other information indicating how the public can access the meeting remotely, to be included in the agenda, which shall be available to the public.
2. Clarifies that the bill does not exempt an advisory state body from providing information regarding the physical location of a state body meeting or any teleconference participation information, including the identity of a state body member who might be participating by teleconference.
3. Requires, on and after January 1, 2019, prior to holding a meeting by teleconference pursuant to this bill, an advisory state body shall adopt teleconferencing regulations to address issues that include, but are not limited to, cancellations as a result of technical difficulties, ensuring transparency, and public participation.

EXISTING LAW:

1. Requires, generally, that state boards and commissions publicly notice their meetings, prepare agendas, accept public testimony, and conduct their meetings in public unless authorized by the Act to meet in closed session.
2. Defines a "state body" as each of the following:
 - a) Every state board, or commission, or similar multimember body of the state that is created by statute or required by law to conduct official meetings and every commission created by executive order.

- b) A board, commission, committee, or similar multimember body that exercises any authority of a state body delegated to it by that state body.
 - c) An advisory board, advisory commission, advisory committee, advisory subcommittee, or similar multimember advisory body of a state body, if created by formal action of the state body or of any member of the state body, and if the advisory body so created consists of three or more persons.
 - d) A board, commission, committee, or similar multimember body on which a member of a body that is a state body pursuant to this sections serves in his or her official capacity as a representative of that state body and that is supported, in whole or in part, by funds provided by the state body, whether the multimember body is organized and operated by the state body or by a private corporation.
3. Provides for audio or audio and visual teleconference meetings for the benefit of the public and state body.
 4. Requires that when a teleconference meeting is held that each site from which a member of the body participates must be accessible to the public.
 5. Provides that all proceedings must be audible and votes must be taken by rollcall.
 6. Exempts agricultural state bodies from the teleconference location requirements in Bagley-Keene.

FISCAL EFFECT: Unknown

COMMENTS:

Purpose of the bill: According to the Author, in June 2015, The Little Hoover Commission released a report titled Conversations for a Workable Government. The report highlighted that while well intentioned, the state process for open meetings is archaic and hinders public participation. It also encouraged the Legislature to find ways to modernize public participation. The legislature has exempted boards and commissions from Bagley-Keene because the restrictions are onerous to follow and actually stifle transparent and effective government. AB 2958 modernizes the teleconferencing provisions of Bagley-Keene to encourage more participation and engagement in public service. This bill protects public access to meetings while creating flexibility in how members of a state body participate in meetings.

Background: When the Legislature enacted the Bagley-Keene Act of 1967 it essentially said that when a body sits down to develop its consensus, there needs to be a seat at the table reserved for the public. In doing so, the Legislature has provided the public with the ability to monitor and be part of the decision-making process. If the body were permitted to meet in secret, the public's role in the decision-making process would be negated. Therefore, absent a specific reason to keep the public out of the meeting, the public should be allowed to monitor and participate in the decision-making process.

Teleconferencing and Bagley-Keene: Video and teleconferencing are in widespread use throughout state government. Under current law, the use of video conferencing is authorized for

a number of civil and criminal court appearances. This technology allows for a reduction in administration costs, transportation, security, and overtime during inmate transfer to courthouses, increased safety to correctional and court staff, and the reduction of escape risks.

Bagley-Keene provides if a meeting is held via teleconference, it shall comply with the following requirements:

- 1) The meeting shall be audibly accessible at the location specified in the meeting notice.
- 2) Agendas shall be posted at all teleconference locations.
- 3) Each teleconference location shall be identified in the notice and agenda and be accessible to the public.
- 4) All votes shall be taken by roll call.
- 5) At least one member shall be physically present at the location specified in the meeting notice.

It is important to note, with the enactment of AB 1976 (Irwin, 2016), current law provides an exemption to agricultural state bodies from the location requirements in Bagley-Keene. Current law requires each teleconference location to be identified in the notice and agenda and be accessible to the public. The exemption provided in AB 1976 (Irwin) allows agricultural state bodies to only post one physical location and only requires one member to be in attendance at said location. This bill seeks to put in place an identical location exemption for all advisory state bodies.

Advisory State Body: Current law defines an advisory state body as “*An advisory board, advisory commission, advisory committee, advisory subcommittee, or similar multimember advisory body of a state body, if created by formal action of the state body or of any member of the state body, and if the advisory body so created consists of three or more persons.*”

Prior versions of this bill applied the teleconference location exemption to all state bodies in the state. This raised a concern that members of a state body that have voting or rulemaking authority could make a decision of consequence via telephone, which unduly limits the public’s right of access. The bill in print today has narrowed the location exemption to state bodies that are advisory in capacity and do not have rulemaking or voting authority. By limiting the exemption to advisory state bodies, the author has alleviated that specific concern

Opposition: The California News Publishers Association writes in opposition: “AB 2958 would significantly diminish the compromise struck in establishing the rules for holding a teleconference. The purpose of requiring public access to each location was intended to retain the public’s ability to attend and participate in those meetings at any location where a member appears. Teleconference was offered for a benefit to the public official who needed to participate telephonically, and also a convenience to any member of the public who might want to attend from that secondary location.

It is an essential element of the open meeting law that the public be guaranteed the right to speak at a teleconference meeting in front of the public officials who make decisions. AB 2958 deletes

that requirement. Indeed, AB 2958's proposal eliminates the public's ability to attend any meeting except from the main location of a teleconference. This subverts the intent of the Bagley-Keene's requirement that public officials doing public business do it in public. In participatory democracy, there are intangible benefits to requiring public officials to literally face the crowd. The current teleconference rule was crafted to maintain the integrity of the democratic process by requiring that public officials actually do business in public—not behind closed doors or while driving on the streets to avoid a public confrontation.

The stated reason for this bill is to provide more convenience for those who serve state agencies. The constitutional right of the public to attend and speak in meetings should never be subservient to the convenience of public officials wanting to conduct public business.”

Author Amendment: The author will be offering and accepting an amendment to require a quorum of the advisory state body to be in attendance at the designated location on the notice and agenda. This goes further to protect the public's right of access, while giving the state body and some of its members the flexibility to participate via teleconference. See below:

Sec. 11123 .5(b) A state body described in this section shall designate a primary physical meeting location where participants may physically attend the meeting and participate. **At least one member A quorum** of the state body shall be in attendance at the primary physical meeting location.

Prior/Related Legislation: AB 1976 (Irwin), Chapter 451, Statutes of 2016. Created an exemption from the teleconference location requirements in Bagley-Keene for agricultural state bodies.

SB 103 (Liu), 2011-2012 Legislative Session. Would have made substantive changes to provisions of the Act relating to teleconference meetings. (Died Assembly Appropriations Suspense File)

SB 962 (Liu), Chapter 482, Statutes of 2010. Allowed the use of videoconferencing and teleconferencing at the court's discretion and subject to availability for prisoners to participate in court proceedings for the termination of their parental rights or the court ordered dependency petition of their child.

SB 519 (Committee on Governmental Organization), Chapter 92, Statutes of 2007. Amended the Bagley-Keene Act to authorize the calling of a special meeting to provide for an interim executive officer of a state body upon the death, incapacity, or vacancy in the office of the executive officer.

AB 277 (Mountjoy), Chapter 288, Statutes of 2005. Made permanent certain provisions authorizing closed sessions for purposes of discussing security related issues pertaining to a state body.

AB 192 (Canciamilla), Chapter 243, Statutes of 2001. Made various changes to the Bagley-Keene Act, which governs meetings held by state bodies, to make it consistent with provisions of the Ralph M. Brown Act, which governs meetings of legislative bodies of local agencies.

SB 95 (Ayala), Chapter 949, Statutes of 1997. Made various changes to the Bagley-Knee Act by expanding the notice, disclosure and reporting requirements for open and closed meetings of state bodies.

Support

None of file

Opposition

California News Publishers Association

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