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Business, Consumer Services and Housing Agency  
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**To: Board Members**

**Subject: Agenda Item XI Presentation on Senate Bill 544 (Laird, Chapter 216, Statutes of 2023) Bagley-Keene Open Meeting Act, Teleconferencing, and Consideration of Potential Changes to Board Member Procedure Manual**

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### Background

Senate Bill 544 enacts certain changes to the Bagley-Keene Open Meeting Act (the "Act"), including establishing several additional, alternative means for state bodies to conduct public meetings. These provisions will take effect on January 1, 2024, and remain in effect until January 1, 2026.

During the meeting, DCA Counsel Corinne Gartner will provide an overview of the new meeting options. Following the presentation, it is recommended that the Board discuss the provisions and determine its preference for conducting Board and committee meetings in 2024-2026.

To assist members with discussion, the following questions may be appropriate to consider.

1. Section 2 of SB 544 provides authority for advisory committee meetings to be held via teleconference, with members participating remotely from private, non-public locations, as long as there is at least one publicly-accessible site with a staff member present. Under this model, members of the public would have the option of participating via WebEx or in person at the publicly-accessible site. All the Board's standing committees that are subject to the Act (Communication and Public Education, Enforcement and Compounding, Legislation and Regulation, and Licensing) are advisory committees. Should the Board transition meetings of these committees to teleconference meetings until January 1, 2026?
2. Section 1 of SB 544 provides authority for some members of the Board to participate remotely from a private, non-public location if a quorum of the Board is physically present at a single publicly-accessible location. Should the Board transition to this meeting option until January 1, 2026? Staff note that the Business and Professions Code provision requiring the Board to conduct at least one meeting annually in southern California remains in place.
3. Business and Professions Code section 4309 establishes the provisions for petitioning the Board for reinstatement or modification of penalty, including modification or termination of probation, and provides flexibility for petitions to be heard by the full Board sitting with an administrative law judge (ALJ), a committee of the Board sitting with an ALJ, or by an ALJ sitting alone. Currently the Board conducts petition hearings as a full Board. In light of the statutory flexibility provided, should the Board transition to

having a committee of the Board, rather than the full Board, consider petitions? Such an approach would allow for members to participate from remote locations in the same manner as petitioners. Staff note that this approach would change the procedure for Board review of petition decisions, however, and would mean that decisions issued by the ALJ following the petition hearing would be subject to review by the Board in the same manner as any other proposed decision on a disciplinary matter.

Following member discussion and action, Board staff will work with the president to ensure appropriate changes are made to the Board Member Procedure Manual.

Following this memo are the presentation slides.



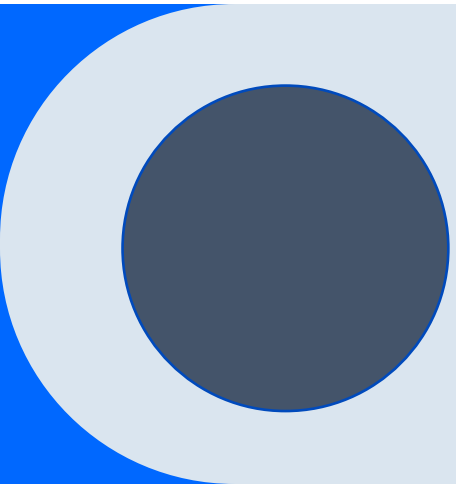
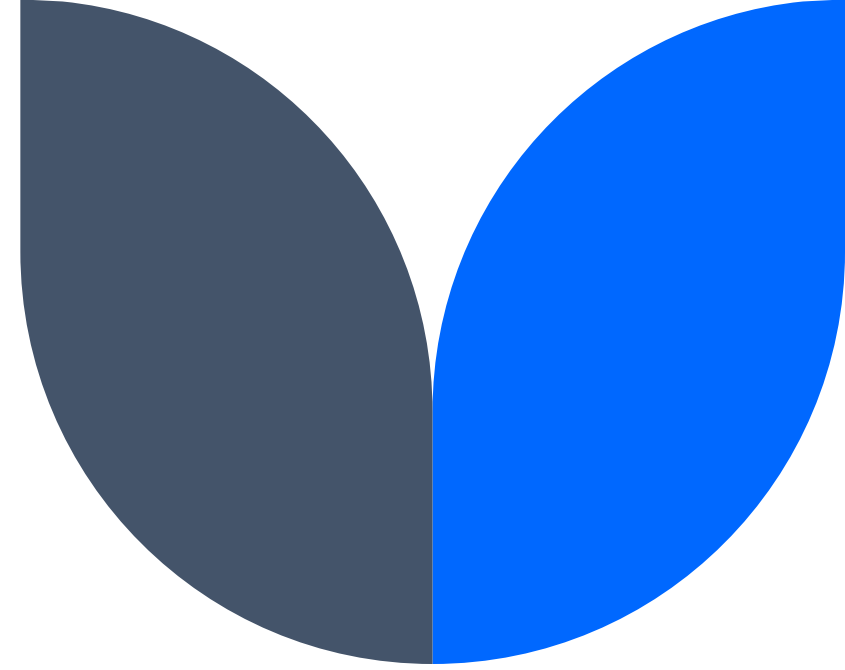
# **SB 544**

# **Teleconference**

# **Meeting Option**

# **Highlights**

Presented by Corinne Gartner, Board Counsel



# Note and Disclaimer

- This presentation highlights some of the new rules set forth in Senate Bill 544, which makes certain changes to the teleconference meeting provisions of the Bagley-Keene Open Meeting Act, effective January 1, 2024. Please consult SB 544 for the full text of the bill.
- All statutory references herein are to the Government Code.



# New Option For All State Bodies (§ 11123.2): Board Member Participation

- At least one member must be physically present at each publicly-accessible location. (Subd. (i).)
- Majority of members (i.e., quorum) must be physically present at the same publicly-accessible location. (Subd. (j)(1).)
- Members above a majority can participate remotely from private, non-public sites. (Subd. (j)(1).)
- Members at private, non-public sites must disclose if other people age 18+ are present in the room, and the general nature of the relationship. (Subd. (j)(4).)

# New Option For All State Bodies (§ 11123.2): Board Member Participation (cont.)

- A member participating remotely from a private, non-public site can be counted toward the majority if the member (1) has a need related to a disability and (2) notifies the state body “at the earliest opportunity possible, including at the start of the meeting...” (Subd. (j)(2).)
- If a member so notifies the state body, the body “shall take action to approve the exception and shall request a general description of the circumstances relating to the member’s need to participate remotely...” (Subd. (j)(3).)

# New Option For All State Bodies (§ 11123.2): Camera Requirements

- All members must visibly appear on camera during the open portion of the meeting. (Subd. (k)(1).)
- EXCEPTIONS: Appearance on camera not required when “technologically impracticable,” including:
  - (1) When there’s a lack of reliable internet connectivity that would be remedied by eliminating video.
  - (2) When the visual display of meeting information, materials or other speakers requires the members’ visual appearance to cease. (Subd. (k)(2).)

# New Option For All State Bodies (§ 11123.2): Camera Requirements (cont.)

- A member who does not appear on camera due to challenges with internet connectivity must announce the reason for their nonappearance when they turn off their camera. (Subd. (k)(3).)



# New Option For All State Bodies (§ 11123.2): Public Participation

- There must be a way for the public to attend and participate virtually in the meeting (e.g., telephonically, WebEx or Zoom). (Subd. (d)(1).)
- The public must also be able to attend at publicly-accessible teleconference sites. (Subds. (a)(2), (d)(1), (f)(1).)
- The open portion of the meeting must be audible and visible at publicly-accessible teleconference sites. (Subd. (c).)

# New Option For All State Bodies (§ 11123.2): Required Adjournment

- Upon discovering that a means of remote public access and participation has failed during a meeting and cannot be restored, the state body must adjourn the meeting AND provide notice of the adjournment on the body's website and by email to any person who has requested notice of meetings. (Subd. (o).)
- 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 agenda, 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. (Subd. (o).)

# New Option for Advisory Bodies Only (§ 11123.5): Member Participation

- There must be at least one publicly-accessible site where the public can attend and participate in the meeting. (Subd. (f).)
- At least one staff member must be present at the site. (Subd. (f).)
- All advisory body members may participate remotely from private, non-public locations.
- A notice (can be the 10-day notice) must identify the advisory body members participating from private, non-public sites. (Subd. (d).)
- Members participating from private, non-public sites must be listed in meeting minutes. (Subd. (c).)

# New Option for Advisory Bodies Only (§ 11123.5): Camera Requirements

- All members must visibly appear on camera during the open portion of the meeting. (Subd. (h)(1).)
- EXCEPTIONS: Appearance on camera not required when “technologically impracticable,” including:
  - (1) When there’s a lack of reliable internet connectivity that would be remedied by eliminating video.
  - (2) When the visual display of meeting information, materials or other speakers requires the members’ visual appearance to cease. (Subd. (h)(2).)

## New Option for Advisory Bodies Only (§ 11123.5): Camera Requirements (cont.)

- A member who does not appear on camera due to challenges with internet connectivity must announce the reason for their nonappearance when they turn off their camera. (Subd. (h)(3).)

## **New Option for Advisory Bodies Only (§ 11123.5): Public Participation**

- There must be a way for the public to remotely access the meeting. (Subd. (g).)
- The public must also be able to attend and participate at one publicly-accessible site. (Subd. (f).)

# New Option for Advisory Bodies Only (§ 11123.5): Required Adjournment

- Upon discovering that a means of remote access has failed during a meeting, the advisory body must adjourn the meeting AND provide notice of the adjournment on the website and by email to any person who has requested notice of meetings. (Subd. (i).)
- 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 agenda, or by a similar means, that will communicate when the advisory body intends to reconvene the meeting and how a member of the public may hear audio of the meeting or observe the meeting. (Subd. (i).)

# Remember: Traditional Meeting Options Are Still Available

## In-Person, Single-Location

- Majority of members gathered together at one publicly-accessible location
- No members participating remotely
- No requirement to allow remote public participation

## Traditional Teleconference

- Members at different publicly accessible locations connected via phone or Zoom/Webex
- No requirement to allow for remote public participation
- See § 11123, subd. (b)





**Questions?**