

Admin.

May 8, 2023

## Memorandum 2023-24

**Response to Legislative Inquiry Regarding Remote Meetings**

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At the Commission's April 2023 meeting, the staff reported that Senator Laird had introduced a bill, Senate Bill 544, which would waive some of the requirements of the Bagley-Keene Open Meeting Act. The effect of the bill would be similar to temporary waivers established during the COVID-19 emergency. The emergency waivers allowed an agency to conduct public meetings entirely by teleconference, with no physical location.

Senator Laird's office has asked the Commission to provide information about its experience using teleconferencing during the COVID-19 emergency. In response, the Commission directed the staff to do the following:

- Prepare a draft of the requested information, being careful to avoid any violation of the rules against advocacy in Government Code Section 8288.
- Present the draft to the Commission for approval, before sending anything to Senator Laird.

A draft is attached for the Commission's review. The Commission should decide whether to approve the draft for delivery to Senator Laird, with or without changes.

Respectfully submitted,

Brian Hebert  
Executive Director

CALIFORNIA LAW REVISION COMMISSION

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May 18, 2023

Hon. Senator John Laird  
State Capitol, Suite 8720  
Sacramento, CA 95814  
**Delivered by Email**

**Re: Senate Bill 544 (Laird)**

Dear Senator Laird:

I am the Executive Director of the California Law Revision Commission ("Commission"). The Commission is a multi-member law reform body that is governed by the Bagley-Keene Open Meeting Act. The Commission also administers a second law reform body that is governed by Bagley-Keene, the Committee on Revision of the Penal Code ("Committee").

Your staff requested that I provide information about our experience with the use of teleconferencing to conduct public meetings.

Pursuant to Government Code Section 8288, I am barred from advocating for or against legislation. Consequently, I take no position on the merits of SB 544. I am writing solely to provide the requested information about the Commission's experience with teleconferencing in public meetings.

**General Background**

Prior to 2020, the Commission had almost no experience with the use of teleconferencing in its meetings. That is because the Bagley-Keene Open Meeting Act imposes requirements on the use of teleconferencing that made its use impracticable. Those requirements are found in Government Code Section 11123(b)(1)(C) & (F):

(b)(1) ...

(C) If the state body elects to conduct a meeting or proceeding by teleconference, it shall 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. Each teleconference location shall be identified in the notice and agenda of the meeting or proceeding, and each teleconference location shall be accessible to the public. The agenda shall provide an opportunity for members of the public to address the state body directly pursuant to Section 11125.7 at each teleconference location.

...

(F) At least one member of the state body shall be physically present at the location specified in the notice of the meeting.

During the COVID-19 emergency, the requirements of (b)(1)(C) and (F) were waived by Executive Orders N-25-20 and N-29-20. That cleared the way to hold public meetings entirely by teleconference.

Between May 2020 and April 2022, the Commission held 19 meetings entirely by teleconference, without a physical location. The Committee held 18 teleconference meetings.

The waivers that made those meetings possible lapsed in early 2022. Consequently, the Commission's May 2022 meeting was held in a hybrid format, with Commissioners participating in a physical location held open to the public, with the addition of a teleconference component. The Committee also held a hybrid-format meeting in May 2022.

The waivers were reinstated on June 30, 2022 (by enactment of Gov't Code § 11133). They are set to expire again on June 30, 2023. The Commission is expecting that it will need to return to in-person meetings after July 1, 2023.

### **Teleconferencing**

*Ease of Use and Reliability.* The Commission has been using Zoom to run its teleconference meetings. Their system has been easy to use and reliable. The Commission has had no problem with the availability or stability of the service. There have been a few technical connection issues; they were easily resolved by the affected user logging off and then back on.

*Cost savings.* Meetings held entirely on zoom are very cost effective. The only regular cost is a Zoom subscription, shared by the Commission and Committee, of approximately \$300 per month.

No special equipment is needed. Nor is there a need to borrow or rent appropriate meeting space.

Everyone can participate on their own device, using their own Internet connection. While not everyone can afford the cost of their own device and Internet connection, such resources can be found at most public libraries. Even where a computer is unavailable, the meeting audio can be accessed by phone. While an audio-only connection is a more limited form of access (as it does not allow for non-verbal communication), it does provide real-time listening and commenting capabilities.

In addition, holding meetings entirely by teleconference eliminates travel costs and burdens. In the 2018-19 Fiscal Year (the last full fiscal year before the pandemic) the Commission spent approximately \$3,000 on travel. The Committee was formed in 2020, so it has no comparable pre-pandemic record, but its travels costs for in-person meetings would likely be similar. Teleconferencing allows the Commission and Committee to avoid roughly \$6,000 annually in travel costs, at a cost of only \$3,600.

Travel to meetings also imposes burdens other than monetary cost. Travel can be very tiring, requiring an early start, four hours or more of travel round trip, and a late return.

The need for travel can also interfere with the Commission's ability to achieve a quorum. Flights are sometimes delayed, canceled, or missed. The Commission has

also had Commissioners miss meetings because of caregiver obligations or illness, which precluded travel. One valuable member of the Committee agreed to serve only on the condition that all meetings would be held by teleconference; his health did not permit travel.

Travel to meetings also increases traffic congestion and carbon emissions. When meetings are held by teleconferencing, those problems are avoided.

**Accessibility.** Because participants can join a meeting from anywhere that has a good Internet connection, there are much lower barriers to participation. This makes it possible for people to attend who would not have been able to attend an in-person meeting. Such people include:

- A person with limited mobility or other disability that makes travel to or attendance at a public meeting difficult or impossible.
- A person caring for a sick child or elderly relative.
- A person who cannot afford the cost of travel to the meeting location.
- A person who cannot take a full day away from work.

The use of teleconferencing has significantly increased the level of public attendance at our meetings. For example, at the Committee's January 2020 meeting, which was conducted in person, there were 13 people in the audience. At its first teleconference meeting in April 2020, there were over 90 people in the audience. Before the use of teleconferencing, Commission meetings typically had fewer than 10 attendees.

**Quality of Deliberation.** There has not been any noticeable reduction in the quality of deliberations by Commission or Committee members. The use of teleconferencing does not seem to create any barrier to full involvement in discussions.

To the contrary, teleconferencing has significantly improved the quality of deliberations, by enabling input from a wide range of experts and interested persons who would likely not have been able to participate if the meetings were held in person.

For example, since its first teleconference meeting in April 2020, the Committee's meetings have included presentations by 36 panels, comprised of 120 subject matter experts (including one person who participated while incarcerated in state prison).

The involvement of large numbers of experts, to inform deliberations, was made practicable by teleconferencing. Without the option of appearing from home or a local office, it would have been much more difficult to find persons who are willing and available to participate. For example, Dean Erwin Chemerinsky of UC Berkeley Law recently appeared at a Commission meeting to discuss constitutional issues related to sex discrimination (including discrimination on the basis of sexual orientation, gender identity, and gender expression). Dean Chemerinsky has many demands on his time. He was able to schedule 30 minutes for the Commission. That would not have been enough time to drive from Berkeley to a meeting in Sacramento, let alone participate in the meeting and then return to Berkeley. With teleconferencing, he was able to participate from his office, during the 30-minute slot he had free in his calendar.

***Meeting Disruptions Avoided.*** At the beginning of the COVID-19 pandemic, there were widespread news reports of troublemakers disrupting public meetings held by teleconference (a practice known as “zoom bombing”). The Commission avoided that problem entirely by using the “webinar” meeting structure. That divides participants into two groups: (1) invited “panelists,” who can be seen and heard, and (2) public “participants” who can observe the meeting but cannot be seen or heard (unless temporarily granted those powers by the person administering the meeting). This approach allowed the Commission to have free-flowing discussion between members, staff, and experts, while foreclosing any disruptive behavior from the audience. Members of the public who wished to comment on the subject of the meeting could be recognized and empowered to speak for the duration of their comment. If any audience member acted inappropriately, the audio could be cut immediately and the person removed from the meeting. With those controls in place, the Commission and Committee have not had any disruptions in the roughly three years of using teleconferencing.

***Transparency.*** In addition to the higher level of public participation described above, teleconferencing increases transparency in another important way. There is the option of automatically recording any Zoom meeting. Those recordings can be made available on the Internet, as a permanent video archive of Commission meetings. This has a number of benefits. Commissioners and Committee members can watch a meeting that they were unable to attend, in order to catch up. This is particularly important when experts make presentations to inform the Commission’s deliberations. For example, Professor Thomas Greene (UC San Francisco Law) made a series of presentations on different aspects of antitrust law and policy. A Commissioner who misses a presentation can watch it later, at their convenience.

A permanent video archive also provides transparency for members of the public who cannot attend meetings but are interested in the Commission’s or Committee’s work. This could include persons researching the history of a statute enacted on the recommendation of the Commission or Committee.

### **Hybrid Format**

***Background.*** When there was a brief lapse in the Bagley-Keene waivers that make teleconferencing practicable, the Commission and Committee experimented with using a hybrid format for their meetings. The hybrid format involved two components: (1) an in-person meeting that is held open to the public (to comply with the law), and (2) a teleconference component (to realize the benefits of teleconferencing discussed above).

To implement the hybrid format, all of the following were required:

- A physical meeting place with a strong and reliable Internet connection.
- A high-quality camera and microphone, to capture audio and video of those meeting in person. That stream would then be fed into a Zoom teleconference, to be shown as one window in the session.
- A digital projector, speaker, and screen (or equivalent), to display the Zoom session to those who are meeting in person.
- A computer, to serve as the hub to which all of the above connect.

The Commission and Committee both held hybrid format meetings in May 2022. The hybrid process worked, but not as well as a meeting held entirely by teleconference.

***Technical complexity and instability.*** The successful operation of the hybrid format involved several different pieces of peripheral equipment, all interconnected through a single computer. That created a system that could fail at any of several different points.

In fact, the start of the Committee's hybrid meeting was delayed slightly, because of problems correctly configuring the computer to accept the various input and output devices (despite having tested the configuration the day before). At the time, it was not clear that the meeting would be able to proceed at all. The Commission's meeting avoided those technical problems, but only because the Commission paid an outside audiovisual expert to set up and operate the equipment.

- ***Low fidelity.*** In a meeting held entirely by teleconference, every participant is sitting directly in front of a high-quality camera and microphone, which captures their audiovisual stream at high resolution. Each invited participant has their own dedicated "box" in the overall display, resulting in a high-quality image of everyone. This is helpful during multimember deliberations, as it allows transmission of facial expressions and other body language, which can provide important nonverbal cues to help guide the discussion.

In the hybrid format, a single camera and microphone are used to capture all of those in attendance at the physical location. This requires that the camera be placed far enough away to have the entire group in frame. Output from that camera is shown as one "box" in the overall display. The result is that the audio and visual quality is degraded. Images are too small and lacking in detail to readily convey nonverbal cues. It is sometimes hard to tell who is speaking.

Similar problems exist for those meeting in person. The images and sound of remote participants is projected onto a screen at enough distance to allow it to be seen by everyone in the room. Again, this degrades the quality of the audio visual signal. Lighting may also be an issue, as it can interfere with an image projected onto a screen. It may be necessary to meet in semi-darkness, in order to avoid having the projected image washed out by ambient light.

When the Committee held its hybrid format meeting, a combination of sound amplification (necessary for those in the physical location to hear people speaking from remote locations) and room acoustics created a booming quality that made it difficult to understand what people were saying.

Although I am not expressing any opinion on the merits of SB 544, it is worth noting that the bill would require that a teleconference meeting include at least one in-person location. That would require the use of a hybrid format, if any of the benefits of teleconferencing are to be realized.

## **Conclusion**

Overall, our experience meeting entirely by teleconference was very positive. There were a number of benefits, most notably the lower bar to participation that enabled greater use of experts and larger public audiences.

Feel free to reach out to me if you wish to discuss anything I've described above.

Sincerely,

A handwritten signature in black ink, appearing to read "Brian Hebert", written in a cursive style.

Brian Hebert  
Executive Director

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