

## MEMORANDUM 2024-11

### Updates on Open Meeting Laws and Meeting Schedule

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This memorandum provides an update on the Bagley-Keene Open Meeting Act issues presented in the [First Supplement to Memorandum 2023-35](#) and an update on the Commission's meeting schedule for 2024 presented in [Memorandum 2024-3](#) and [Memorandum 2023-46](#).<sup>1</sup>

#### BAGLEY-KEENE OPEN MEETING ACT UPDATE

In the First Supplement to Memorandum 2023-35, which was considered at the Commission's October 19, 2023, meeting, the staff recommended against the Commission conducting meetings under [Government Code Section 11123.5](#). That section was amended in 2023<sup>2</sup> to allow state advisory body members to participate in teleconference meetings from remote locations.<sup>3</sup> The staff recommendation was based, in part, on uncertainty about the meaning of the term "advisory body" and whether the Commission fell within the meaning of that term.<sup>4</sup> The Commission did not make a formal decision on the format of future meetings and instead generally agreed to use the hybrid meeting approach where commissioners could appear remotely at publicly noticed locations.<sup>5</sup> At the Commission's February 25, 2024, meeting the staff was directed to further explore the possibility of conducting Commission meetings under Section 11123.5.

Recently the California Department of Justice updated its Bagley-Keene Open Meeting Act Guide (DOJ's Guide)<sup>6</sup> to reflect changes to the law that became operative on

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<sup>1</sup> Any California Law Revision Commission document referred to in this memorandum can be obtained from the Commission. Recent materials can be downloaded from the Commission's website ([www.clrc.ca.gov](http://www.clrc.ca.gov)). Other materials can be obtained by contacting the Commission's staff, through the website or otherwise. T

The Commission welcomes written comments at any time during its study process. Any comments received will be a part of the public record and may be considered at a public meeting. However, comments that are received less than five business days prior to a Commission meeting may be presented without staff analysis.

<sup>2</sup> See 2023 Cal. Stat. ch. 216, §§ 2, 3 ([SB 544](#) (Laird)).

<sup>3</sup> This teleconferencing authority will be repealed as of January 1, 2026. On January 1, 2026, the statute will revert to the law as it existed on December 31, 2023. See

<https://leginfo.legislature.ca.gov/faces/selectFromMultiples.xhtml?sectionNum=11123.5&lawCode=GOV>.

<sup>4</sup> The memorandum also cited to the constitutional requirement that a statute be construed in favor of the public's right of access. See First Supplement to Memorandum 2023-35, p. 2.

<sup>5</sup> See Gov't Code § [11123](#).

<sup>6</sup> <https://oag.ca.gov/system/files/media/bk-open-meeting-act-guide-2024.pdf>.

January 1, 2024, including special teleconferencing rules for advisory bodies. The DOJ's Guide states the following:<sup>7</sup>

State advisory bodies may hold teleconference meetings in the same way as decisionmaking bodies. *The Act also has special teleconference rules for advisory state bodies—whether created by statute or by a parent state body.* (Gov. Code, § 11123.5.) An advisory body makes recommendations to a decision-maker and does not have decision-making authority. (See, e.g., *Freedom Newspapers, Inc. v. Orange County Employees Retirement System* (1993) 6 Cal.4th 821, 824.) An advisory body may choose to follow either the traditional or the alternative teleconference rules applicable to decision-making bodies, or the special teleconference rules only applicable to advisory bodies, but not at the same time. (Gov. Code, § 11123.5, subd. (b).)

The special teleconference rules for advisory bodies allow state advisory body members to participate in meetings remotely from a remote location. (Gov. Code, § 11123.5.) The state advisory body need not disclose the location of any member participating remotely from a remote location. (Gov. Code, § 11123.5, subd. (d).) Like traditional teleconference rules, remote participation by members may be audio only, or both audio and video. (Gov. Code, § 11123.5, subd. (a)(3).)

To hold a special teleconference, at least one staff member must be present at the primary physical location designated in the agenda. The state advisory body must provide a 24-hour notice on its website and to persons on its email mailing list if a member will participate remotely from a remote location. (Gov. Code, § 11123.5, subd. (d).) The 24-hour notice must also describe how the public may participate in the meeting remotely. (Gov. Code, § 11123.5, subd. (g).) If available, the state advisory body must provide remote access to the public equal to that provided to members participating remotely. (*Ibid.*) The minutes of the meeting must identify those members who attended the meeting remotely. (Gov. Code, § 11123.5, subd. (c).)

All state advisory body members must visibly appear on camera at the special teleconference meeting unless: (1) the meeting is only accessible remotely to members and the public by telephone; or (2) the visual appearance of a state body member on camera is technologically impracticable due to connectivity issues, or the camera is visually displaying a speaker or meeting material instead. If a member is unable to appear on video due to connectivity challenges, the member must announce the technical reason for turning off their camera. (Gov. Code, § 11123.5, subd. (h).)

The DOJ's Guide indicates that the teleconference rules apply to an advisory body created by statute. This would appear to apply to the Commission, as it is a body created by statute that makes recommendations to the Legislature.<sup>8</sup> In addition to reviewing the DOJ's Guide, the staff conferred with the Executive Directors of commissions similar to the California Law Revision Commission before DOJ's Guide was issued and they had a

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<sup>7</sup> See DOJ's Guide, pp. 25-26 (emphasis added and footnotes omitted).

<sup>8</sup> See Gov't Code Sections [8280](#), [8289](#), [8291](#), [8292](#), and [8293](#).

similar reading of the law. Finally, the staff has received informal oral advice from the Office of Legislative Counsel that the staff will share at the meeting.

**In light of the DOJ’s Guide, does the Commission wish to amend its handbook to make clear that the Commission views itself as an advisory body for the purposes of the teleconferencing authority provided by Government Code Section 11123.5 until that section is repealed effective January 1, 2026?**

## MEETING SCHEDULE UPDATE

In light of these issues and recent experience with teleconference meetings, the Commission may want to adjust the schedule of meetings remaining for this year. The current proposed schedule is as follows:

- June 20, 2024, 9:30 a.m. – 1:30 p.m.: In-person meeting Silicon Valley.
- August 15, 2024, 9:30 a.m. – 1:30 p.m.: In-person meeting Los Angeles.
- September 12, 2024, 9:30 a.m. – 1:30 p.m.: Hybrid meeting. \*
- October 10, 2024, 9:30 a.m. – 1:30 p.m.: Hybrid meeting.
- November 7, 2024, 9:30 a.m. – 1:30 p.m.: Hybrid meeting. \*
- December 5, 2024, 9:30 a.m. – 1:30 p.m.: Hybrid meeting.

The staff recommends against moving to a teleconferencing meeting format for the previously designated in-person meetings (June and August). The staff recommends adjusting the expected meeting time for the in-person meetings to be full-day (~9:30-4:30) as opposed to half-day. The staff is finding it difficult to secure affordable locations outside of Sacramento that also meet the technology needs for the meetings. For this reason, the staff proposes to conduct the June and August meetings in Sacramento. **Are these proposed changes acceptable to the Commission?**

One option the Commission could consider is having all in-person meetings, with some meetings removed from the calendar, given the high public interest in the study work the Commission is currently undertaking. The staff notes that if a commissioner cannot travel to an in-person meeting, under the special teleconferencing rules they could still participate remotely. If the Commission wishes to move to all in-person meetings, the staff recommends removing the September 12, and November 7, 2024 meetings (noted with asterisks above).

**Does the Commission wish to make changes to the meeting schedule?**

Respectfully submitted,

Sharon Reilly  
Executive Director