

Date of Hearing: April 28, 2021

ASSEMBLY COMMITTEE ON LOCAL GOVERNMENT
Cecilia Aguiar-Curry, Chair
AB 339 (Lee & Christina Garcia) – As Amended April 15, 2021

SUBJECT: Local government: open and public meetings.

SUMMARY: Makes a number of changes to the Ralph M. Brown Act (Brown Act), including requiring specified telephone and internet access to local agency meetings and specified language translation services for those meetings. Specifically, **this bill:**

- 1) Clarifies that all persons shall be permitted to attend any meeting of a legislative body of a local agency in person, except as otherwise provided by the Brown Act.
- 2) Requires all meetings to include an opportunity for members of the public to attend via a telephonic option and “an internet-based service option,” which is defined to mean “a service or platform that allows two-way video and audio participation through the internet.”
- 3) Specifies that teleconferencing, as authorized by the Brown Act, may be used by members of the legislative body.
- 4) Requires, unless there are any laws that prohibit in-person government meetings in the case of a declared state of emergency, including a public health emergency, all meetings to include an in-person public comment opportunity, wherein members of the public can report to a designated site to give public comment in person.
- 5) Requires the location of the designated site for giving public comment in person, and any relevant instructions on in-person commenting, to be included with the public posting of the agenda.
- 6) Requires all meetings to provide the public with an opportunity to comment on proposed legislation, both in person and remotely via a telephonic and an internet-based service option, and ensure the opportunity for the members of the public participating via a telephonic or an internet-based option to comment on agenda items with the same time allotment as a person attending a meeting in person.
- 7) Provides that registration for public comment period is permitted, so long as instructions to register are posted, members of the public are able to register over the telephone and in person, and registration remains open until the comment period has finished for that agenda item. Information collected for registration purposes shall be limited to name, telephone number, and county of residence.
- 8) Provides that instructions on joining a meeting via telephonic or internet-based service option, including registration for public comment, if required, shall be made available to all non-English-speaking persons upon request and should at minimum be published in the two most spoken languages other than English within the boundaries of the territory over which the local agency exercises jurisdiction. The meeting agenda should be made available upon request to all non-English-speaking persons within those boundaries in their language, regardless of national origin or language ability.

- 9) Removes an option for members of the public to directly address the legislative body on any item of interest to the public before the legislative body's consideration of the item.
- 10) Requires all members of the public to be entitled to participate in public meetings, regardless of national origin or language ability.
- 11) Provides that, if interpretation services are requested for the public meeting and public comment period, those services should be provided.
- 12) Requires local agencies to have in place a system for requesting and receiving interpretation services for public meetings, including the public comment period. Local agencies shall publicize this system and the instructions on how to request certified interpretation services for public meetings online.
- 13) Provides that no reimbursement is required by this bill pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district under this act would result either from a legislative mandate that is within the scope of paragraph (7) of subdivision (b) of Section 3 of Article I of the California Constitution, or because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.
- 14) Finds and declares that this bill furthers, within the meaning of paragraph (7) of subdivision (b) of Section 3 of Article I of the California Constitution, the purposes of that constitutional section as it relates to the right of public access to the meetings of local public bodies or the writings of local public officials and local agencies. Pursuant to those provisions, the Legislature makes the following findings:

The provisions of the bill allow for greater public access through requiring specified entities to provide a telephonic and internet-based service option and instructions on how to access these options to the public for specified meetings and allow for greater accommodations for non-English speakers attending the meetings.
- 15) Makes a number of technical and conforming changes.

FISCAL EFFECT: This bill is keyed fiscal and contains a state-mandated local program.

COMMENTS:

- 1) **Background.** The Brown Act was enacted in 1953 and has been amended numerous times since then. The legislative intent of the Brown Act was expressly declared in its original statute, which remains unchanged:

“The Legislature finds and declares that the public commissions, boards and councils and other public agencies in this State exist to aid in the conduct of the people’s business. It is the intent of the law that their actions be taken openly and that their deliberations be conducted openly. The people of this State do not yield their sovereignty to the agencies which serve them. The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to

know. The people insist on remaining informed so that they may retain control over the instruments they have created.”

The Brown Act generally requires meetings to be noticed in advance, including the posting of an agenda, and generally requires meetings to be open and accessible to the public. The Brown Act also generally requires members of the public to have an opportunity to comment on agenda items, and generally prohibits deliberation or action on items not listed on the agenda.

The Brown Act defines “local agency” to mean a county, city, whether general law or chartered, city and county, town, school district, municipal corporation, district, political subdivision, or any board, commission or agency thereof, or other local public agency.

The Brown Act defines “legislative body” to mean:

- a) The governing body of a local agency or any other local body created by state or federal statute;
- b) A commission, committee, board, or other body of a local agency, whether permanent or temporary, decision-making or advisory, created by charter, ordinance, resolution, or formal action of a legislative body. Advisory committees composed solely of the members of the legislative body that are less than a quorum of the legislative body are not legislative bodies. Standing committees of a legislative body, irrespective of their composition, that have a continuing subject matter jurisdiction or a meeting schedule fixed by charter, ordinance, resolution, or formal action of a legislative body are legislative bodies; and,
- c) A board, commission, committee, or other multimember body that governs a private corporation, limited liability company, or other entity that either:
 - i) Is created by the elected legislative body in order to exercise authority that may lawfully be delegated by the elected governing body to a private corporation, limited liability company, or other entity; or,
 - ii) Receives funds from a local agency and the membership of whose governing body includes a member of the legislative body of the local agency appointed to that governing body as a full voting member by the legislative body of the local agency.

The Brown Act defines a “meeting” as “any congregation of a majority of the member of a legislative body at the same time and location, including teleconference locations, to hear, discuss, deliberate, or take action on any item that is within the subject matter jurisdiction of the legislative body.”

The Brown Act specifies that a member of the public shall not be required, as a condition of attending a meeting, to register a name, provide other information, complete a questionnaire, or otherwise fulfill any condition precedent to attendance. If an attendance list, register, questionnaire, or other similar document is posted at or near the entrance to the room where the meeting is to be held, or is circulated during the meeting, it must state clearly that

signing, registering, or completing the document is voluntary, and that all persons may attend the meeting regardless of whether a person signs, registers, or completes the document.

The Brown Act allows a district attorney or any interested person to seek a judicial determination that an action taken by a local agency's legislative body violates specified provisions of the Brown Act – including the provisions governing open meeting requirements, teleconferencing, and agendas – and is therefore null and void.

- 2) **Teleconferencing and the Brown Act.** The Brown Act first allowed meetings to be conducted via video teleconference in 1988. At the time, San Diego County was considering the use of video teleconferencing for meetings and hearings of the board of supervisors due to concerns about the long distances that some of their constituents were having to travel to participate in board meetings. They were especially concerned that these distances were so great that they prohibited some people from attending meetings at all. AB 3191 (Frazee), Chapter 399, Statutes of 1988, responded to these concerns by authorizing the legislative body of a local agency to use video teleconferencing. Since that time, a number of bills have made modifications to this original authorization.

Presently, the Brown Act allows the legislative body of a local agency to use teleconferencing for the benefit of the public and the legislative body in connection with any meeting or proceeding authorized by law. The teleconferenced meeting or proceeding must comply with all requirements of the Brown Act and all otherwise applicable provisions of law relating to a specific type of meeting or proceeding. Teleconferencing may be used for all purposes in connection with any meeting within the subject matter jurisdiction of the legislative body. All votes taken during a teleconferenced meeting must be taken by rollcall.

If a legislative body of a local agency elects to use teleconferencing, it must post agendas at all teleconference locations and conduct teleconference meetings in a manner that protects the statutory and constitutional rights of the parties or the public appearing before the legislative body of a local agency. Each teleconference location must be identified in the notice and agenda of the meeting or proceeding, and each teleconference location shall be accessible to the public.

During the teleconference, at least a quorum of the members of the legislative body must participate from locations within the boundaries of the territory over which the local agency exercises jurisdiction, with specified exceptions. The agenda must provide an opportunity for members of the public at each teleconference location to address the legislative body directly pursuant to the Brown Act's provisions governing public comment.

“Teleconference” is defined as a meeting of a legislative body, the members of which are in different locations, connected by electronic means, through either audio or video, or both.

Teleconferencing has never been required. It has always been permissive.

- 3) **Agendas.** The Brown Act requires local agencies to post, at least 72 hours before a regular meeting, an agenda containing a brief general description of each item of business to be transacted or discussed at the meeting, including items to be discussed in closed session. The agenda must specify the time and location of the regular meeting and must be posted in a location that is freely accessible to members of the public and on the local agency website, if

the local agency has one. No action or discussion may be undertaken on any item not appearing on the posted agenda, with specified exceptions.

If requested, the agenda must be made available in appropriate alternative formats to persons with a disability, as required by Section 202 of the Americans with Disabilities Act of 1990 (ADA), and the federal rules and regulations adopted to implement the ADA. The agenda must include information regarding how, to whom, and when a request for disability-related modification or accommodation, including auxiliary aids or services, may be made by a person with a disability who requires a modification or accommodation in order to participate in the public meeting.

- 4) **Comment Periods.** The Brown Act generally requires every agenda for regular meetings to provide an opportunity for members of the public to directly address the legislative body on any item of interest to the public, before or during the legislative body's consideration of the item, that is within the subject matter jurisdiction of the legislative body. The legislative body of a local agency may adopt reasonable regulations to ensure that this intent is carried out, including, but not limited to, regulations limiting the total amount of time allocated for public testimony on particular issues and for each individual speaker.

However, when the legislative body of a local agency limits time for public comment, the legislative body must provide at least twice the allotted time to a member of the public who utilizes a translator to ensure that non-English speakers receive the same opportunity to directly address the legislative body of a local agency.

- 5) **Executive Order N-29-20.** In March of 2020, the Governor issued Executive Order N-29-20, which stated that, "Notwithstanding any other provision of state or local law (including, but not limited to, the Bagley-Keene Act or the Brown Act), and subject to the notice and accessibility requirements set forth below, a local legislative body or state body is authorized to hold public meetings via teleconferencing and to make public meetings accessible telephonically or otherwise electronically to all members of the public seeking to observe and to address the local legislative body or state body. All requirements in both the Bagley-Keene Act and the Brown Act expressly or impliedly requiring the physical presence of members, the clerk or other personnel of the body, or of the public as a condition of participation in or quorum for a public meeting are hereby waived."

"All of the foregoing provisions concerning the conduct of public meetings shall apply only during the period in which state or local public health officials have imposed or recommended social distancing measures."

- 6) **Proposition 42.** Proposition 42 was passed by voters on June 3, 2014, and requires all local governments to comply with the Public Records Act and the Brown Act and with any subsequent changes to those Acts. Proposition 42 also eliminated reimbursement to local agencies for costs of complying with the Public Records Act and the Brown Act.
- 7) **Dymally-Alatorre Bilingual Services Act.** The Dymally-Alatorre Bilingual Services Act (Dymally-Alatorre) was enacted in 1973 with the following findings, declarations, and legislative intent:

“The Legislature hereby finds and declares that the effective maintenance and development of a free and democratic society depends on the right and ability of its citizens and residents to communicate with their government and the right and ability of the government to communicate with them.

“The Legislature further finds and declares that substantial numbers of persons who live, work and pay taxes in this state are unable, either because they do not speak or write English at all, or because their primary language is other than English, effectively to communicate with their government. The Legislature further finds and declares that state and local agency employees frequently are unable to communicate with persons requiring their services because of this language barrier. As a consequence, substantial numbers of persons presently are being denied rights and benefits to which they would otherwise be entitled.

“It is the intention of the Legislature in enacting this chapter to provide for effective communication between all levels of government in this state and the people of this state who are precluded from utilizing public services because of language barriers.”

Dymally-Alatorre requires every local public agency, as defined in the Brown Act, serving a substantial number of non-English-speaking people, to employ a sufficient number of qualified bilingual persons in public contact positions or as interpreters to assist those in such positions, to ensure provision of information and services in the language of the non-English-speaking person. Dymally-Alatorre requires the determination of what constitutes a “substantial number of non-English-speaking people” and a “sufficient number of qualified bilingual persons” to be made by the local agency.

Dymally-Alatorre requires any materials explaining services available to the public to be translated into any non-English language spoken by a substantial number of the public served by the agency. Whenever notice of the availability of materials explaining services available is given, orally or in writing, it must be given in English and in the non-English language into which any materials have been translated. Dymally-Alatorre requires the determination of when these materials are necessary when dealing with local agencies to be left to the discretion of the local agency.

Dymally-Alatorre defines a “qualified bilingual person,” “qualified bilingual employee,” or “qualified interpreter” as a person who is proficient in both the English language and the non-English language to be used. Dymally-Alatorre requires the determination of what constitutes “qualified” to be left to the discretion of the local agency.

Dymally-Alatorre defines “a substantial number of non-English-speaking people” as members of a group who either do not speak English, or who are unable to effectively communicate in English because it is not their native language, and who comprise 5% or more of the people served by the local office.

Dymally-Alatorre specifies that the furnishing of information or rendering of services includes, but is not limited to, providing public safety, protection, or prevention, administering state benefits, implementing public programs, managing public resources or facilities, holding public hearings, and engaging in any other state program or activity that involves public contact.

Dymally-Alatorre specifies that its provisions shall be implemented to the extent that local, state or federal funds are available, and to the extent permissible under federal law and the provisions of civil service law governing the state and local agencies.

- 8) **Author's Statement.** According to the author, "Public meetings were able to quickly adapt to changing dynamics during the pandemic. While on one hand, meetings have expanded access to people who wouldn't ordinarily be able to participate such as working families, COVID-19 has also exacerbated existing barriers that prevent people from participating in one of our democracy's greatest features – public discourse.

"AB 339 would protect the public's access to government, both during and following the COVID-19 pandemic. This bill would ensure that:

- Local agencies provide telephone and teleconference options for all open public meetings so constituents can participate either remotely or in-person.
- Language access services are provided upon request.
- Meeting agendas and instructions for accessing meetings remotely are posted in a timely and accessible manner."

- 9) **Bill Summary.** This bill makes a number of changes to the Brown Act's provisions governing meetings and teleconferencing, agendas and public comment.

a) **Provisions modifying meetings and teleconferencing requirements:**

- i) Requires all meetings to include an opportunity for members of the public to attend via a telephonic option and "an internet-based service option," which is defined to mean "a service or platform that allows two-way video and audio participation through the internet;"
- ii) Requires all meetings to include an in-person public comment opportunity, wherein members of the public can report to a designated site to give public comment in person, unless there are any laws that prohibit in-person government meetings in the case of a declared state of emergency, including a public health emergency. The location of the designated site for giving public comment in person, and any relevant instructions on in-person commenting, must be included with the public posting of the agenda;
- iii) Requires all meetings to provide the public with an opportunity to comment on proposed legislation, both in person and remotely via a telephonic and an internet-based service option. Meetings must also ensure the opportunity for the members of the public participating via a telephonic or an internet-based option to comment on agenda items with the same time allotment as a person attending a meeting in person;
- iv) Specifies that registration for public comment period is permitted, so long as instructions to register are posted, members of the public are able to register over the telephone and in person, and registration remains open until the comment period has

finished for that agenda item. Information collected for registration purposes must be limited to name, telephone number, and county of residence; and,

- v) Specifies that teleconferencing may be used by members of the legislative body, and that all persons shall be permitted to attend any meeting of a legislative body of a local agency **in person**, except as otherwise provided by the Brown Act.

b) **Provisions modifying agenda requirements:**

- i) Requires instructions on joining a meeting via telephonic or internet-based service option, including registration for public comment, to be made available to all non-English-speaking persons upon request;
- ii) Provides that these instructions “should” be published in the two most spoken languages other than English within the boundaries of the territory over which the local agency exercises jurisdiction; and,
- iii) Provides that the meeting agenda “should” be made available upon request to all non-English-speaking persons within the boundaries of the territory over which the local agency exercises jurisdiction in their language, regardless of national origin or language ability.

c) **Provisions modifying public comment requirements:**

- i) Removes an option for members of the public to directly address the legislative body on any item of interest to the public, **before** the legislative body’s consideration of the item;
- ii) Requires all members of the public to be entitled to participate in public meetings, regardless of national origin or language ability;
- iii) Provides that, if interpretation services are requested for the public meeting and public comment period, those services “should” be provided; and,
- iv) Requires local agencies to have in place a system for requesting and receiving interpretation services for public meetings, including the public comment period. Local agencies must publicize this system and the instructions on how to request certified interpretation services for public meetings online.

This bill is sponsored by the Leadership Counsel for Justice & Accountability, and ACLU California Action.

10) **Policy Considerations.** The Committee may wish to consider the following policy issues:

- a) **Significant New Requirements.** This bill imposes significant new requirements on how local agency meetings must function. As mentioned above, teleconferencing has never before been required of local agencies – it has always been permissive. While many local agencies may already have implemented teleconferencing capabilities, live-streaming, and/or call-in public comment options, either before or after the Governor’s Executive

Order, many still lack the equipment, staff, internet access and other technical support necessary to provide both telephonic *and* internet access to their meetings – particularly two-way internet operability. In addition, the provisions of this bill requiring translation of agendas and translation services during meetings extend beyond the scope of existing requirements pursuant to Dymally-Alatorre. The Committee may wish to consider whether this bill strikes a reasonable balance between increasing public access and participation, and providing local governments with an appropriate level of flexibility in conducting their open and public meetings.

- b) **Scope.** The provisions of this bill would apply to all meetings of all legislative bodies of all local agencies in California, as defined in the Brown Act. Local agencies that would have to comply include counties, cities, including charter cities, a city and county, towns, school districts, municipal corporations, districts (including special districts), political subdivisions, or any boards, commissions or agencies thereof, or other local public agencies.

The legislative bodies of these local agencies that would have to comply include:

- i) The governing body of a local agency or any other local body created by state or federal statute;
- ii) A commission, committee, board, or other body of a local agency, whether permanent or temporary, decision-making or advisory, created by charter, ordinance, resolution, or formal action of a legislative body. This would include standing committees of a legislative body, irrespective of their composition, that have a continuing subject matter jurisdiction or a meeting schedule fixed by charter, ordinance, resolution, or formal action of a legislative body; and,
- iii) A board, commission, committee, or other multimember body that governs a private corporation, limited liability company, or other entity that is created by the legislative body to exercise authority that may lawfully be delegated to those entities; or, that receives funds from a local agency and the membership of whose governing body includes a member of the legislative body of the local agency appointed to that governing body as a full voting member by the legislative body of the local agency.

The Committee may wish to consider whether the significant new requirements of this bill should apply to such an expansive scope of local agencies, or if the affected agencies should be limited in some manner.

- c) **Cost Considerations.** Many local governments have expressed concerns over the costs this bill could impose on their budgets. In addition to the costs associated with the requirements to provide access telephonically and via the internet, the language translation requirements pose a substantial cost burden.

According to a coalition of multiple local government associations, including the League of California Cities, the California State Association of Counties, the California Special Districts Association, the California School Boards Association, and others, “the requirement to employ translators and provide live translation services presents another deep cost requirement and operational burden that could end up paralyzing the work of

local agencies. AB 339 places new translation requirements in the Brown Act that continue the troubling trend of avoiding state constitutional reimbursement requirements that do not apply to the Brown Act.

“Under current law, local government translation service requirements are governed by Government Code § 7290-7299.8, more commonly known as the Dymally-Alatorre Bilingual Services Act. The Act requires local public agencies to provide certain materials in multiple languages and requires agencies serving a substantial number of non-English-speaking people to employ a sufficient number of qualified bilingual persons in public contact positions or as interpreters to assist those in such positions, to ensure provision of information and services in the language of the non-English speaking person. However, unlike the one size fits all approach to translation requirements in AB 339, the Dymally-Alatorre Bilingual Services Act properly recognizes the diversity of local agencies in size, scope, location, services offered, and financial resources available.

“Under this bill, local public agencies, regardless of size, financial resources, or the public’s desire for services, would be required to develop a system to receive and process requests for translation and interpretation. This again raises the question of what happens if enough translators are not available for every council, planning commissioner, or board meeting? There are thousands of local agencies in the state governed by the Brown Act and forcing them to schedule their meetings and their work around a workforce, the capacity of which is unknown, raises serious concerns about how local elected officials are to continue the work that is expected of them. Additional requirements to mandate translation of written materials poses another significant challenge, in that agenda materials can be extensive and technically complex, requiring specialized translation skills and significant amounts of time to complete appropriately.”

The Committee may wish to consider the merits of this bill versus its costs.

- d) **Shifting Priorities?** Because local agencies can no longer seek reimbursement for costs incurred to comply with the Brown Act, any additional costs this bill imposes would have to be paid out of local agencies’ general funds. These funds pay for numerous other services and programs, such as: police, fire and other public safety services; parks and libraries; public infrastructure; and, community development programs to name a few. The costs of implementing this bill could result in reductions of limited dollars for other general-fund programs and services. The Committee may wish to consider if the requirements of this bill should be prioritized over other programs and services that are supported by local governments’ general funds.
- e) **Technological Challenges and Legal Implications.** The local agencies referenced above are also concerned about the potential unintended consequences of technological breakdowns, asking, “what happens if either the teleconferencing service or the internet-based option aren’t available or if service disruptions occur during a meeting (whether through the service itself, or the internet service or telephone service provider)? It is our understanding if this bill passed, local public agencies would not be able to conduct Brown Act-compliant meetings without having all services advertised in meeting announcements being operational – for the entire meeting. This means that conditions necessary to operate our members’ meetings but wholly outside of their control determine whether public meetings can legally take place or not. We strongly believe that

conditioning the operations of local government on the operability of Zoom services, for example, dangerously destabilizes our ability to meet immediate fiscal, legal, and practical obligations to constituents.”

- f) **Disruption of Public Meetings.** According to the local government associations referenced above, “...as has been often chronicled in the news media, one significant challenge that has arisen in the Zoom era is of disruption of public meetings. These disruptions have taken the form of derogatory, racist, sexist, hateful, and offensive language in addition to coordinated hijackings of public meetings that involve the display of profane or pornographic images or videos. In other cases, meetings have been taken over by coordinated campaigns involving individuals from across the country calling in to provide public comment on municipal agenda items.

“While we do not cast aspersions on those who wish to participate, these directed campaigns are often designed to only punish local public agencies and paralyze their work by dragging out the public comment period beyond any rational length. We believe it is instructive to look at the experience the legislature had with expanded access, and what its response was; in both houses, committees have reduced public comment time for the sake of operational efficiency. While we appreciate the willingness of the author to attempt to remedy this by including a provision allowing for registration to “be permitted” this does nothing to substantively solve the issue of a participation floodgate being opened because local agencies cannot require registration or provision of any information as a condition for participating in public meetings...”

In addition to the concerns regarding the ability of local agencies to conduct meetings in a reasonable time-frame without disruptions of the kinds described, the Committee may wish to consider that such interactions pose the potential of stifling interest in seeking public office by the very people the bill seeks to assist in participating in their local governments.

- 11) **Committee Amendments.** In order to address some of the concerns raised above, as well as technical considerations, the Committee may wish to adopt the following amendments:

- a) Limit the bill’s applicability to the meetings of city councils and county boards of supervisors only, the jurisdictions of which contain a population of at least 250,000 people;
- b) Require public access via telephone OR internet (not both);
- c) Remove language requiring two-way operability for internet;
- d) Remove all language translation requirements;
- e) Remove language allowing local agencies to require members of the public to register in order to provide public comment;
- f) Remove language allowing teleconferencing to be used by members of the legislative body (to avoid inadvertently precluding the use of teleconferencing by the public);

- g) Refine language referring to “all meetings” to state “all open and public meetings” (to ensure closed sessions are not subject to the provisions of the bill);
- h) Restore current law allowing public comment **before** an agenda item is taken up; and,
- i) Add a sunset date of December 31, 2023.

12) **Related Legislation.** AB 361 (R. Rivas) allows a local agency to use teleconferencing without complying with the specified teleconferencing requirements of the Brown Act when holding a meeting for the purpose of declaring or ratifying a local emergency, during a declared state of emergency or local emergency, when state or local health officials have imposed or recommended measures to promote social distancing, and during a declared local emergency. AB 361 is scheduled to be heard in this Committee on May 5, 2021.

AB 703 (Rubio) removes in-person public access and quorum requirements for teleconferenced meetings under the Brown Act. AB 703 is pending in this Committee.

13) **Arguments in Support.** Leadership Counsel for Justice & Accountability and ACLU California Action, sponsors of this bill, and a large coalition of supporters, write, “Many of our organizations work with communities that face impediments to participation in the government decision-making process. Most people are unable to take time from their jobs or other obligations during the day to participate in public meetings. For rural residents, people without access to transportation, people with disabilities, and seniors, commuting to public meetings is effectively impossible.

“In addition, the millions of Californians who speak a language other than English require interpretation services to adequately participate in public meetings conducted in English. These communities deserve a seat at the decision-making table and a voice in policy decisions that affect them, and it is the responsibility of the government to facilitate their participation. Our democracy functions best when everyone – not just those who already have power – is able to participate in the public process.

“During the COVID-19 pandemic, remote meetings have provided a unique opportunity for Californians across the state to better participate in local government meetings. However, the pandemic has simultaneously illustrated how existing inequities such as lack of broadband access or language interpretation services create barriers that prevent many from accessing this opportunity. At the local level, there is a clear need for reforms that ensure that all Californians – regardless of their ability to attend meetings in-person or speak a language different than English – are able to participate in the governmental decision-making process.

“AB 339 would enhance public participation by ensuring that constituents have opportunities to join and comment at public meetings in-person, via a telephonic option and via an internet-based service option. AB 339 would also establish standards for posting both agendas and instructions for joining meetings via teleconference technology in a timely manner and at an easily accessible location online. Finally, language interpretation services would be available to all who wish to attend and comment at public meetings.

“Clearer standards that ensure the equitable access to public meetings are necessary to ensure a government that is accountable to all of its constituents, not just a select few. Our

democracy cannot function unless everyone is able to participate equally - regardless of ability to travel, internet access, or language fluency.”

- 14) **Arguments in Opposition.** A coalition of local government associations, including the League of California Cities, the California State Association of Counties, the California Special Districts Association, the California School Boards Association, and others, write, “...local public agencies have strived to maintain a continuity of government during the pandemic while also continuing to provide essential services. However, once social distancing requirements are lifted and more legislative bodies return to their meeting rooms, AB 339 (if passed) would present an immediate technological and staffing challenge of providing a ‘live mic’ for public comment and connecting that system to both a teleconferencing and internet-based service. That challenge is only compounded by the resource limitations affecting agencies up and down the state, as compliance with these provisions will require (a) significant one-time equipment expenses; and (b) ongoing costs for personnel and technology service subscriptions to ensure strict compliance with the bill.

“...we also believe it is important to recognize the impacts of this legislation on the boards and commissions that advise and make recommendations to primary legislative bodies. By raising the bar to effectively and efficiently operate local boards and commissions, which for some agencies can number in the dozens, it becomes more difficult for our agencies to carry out their essential functions. For example, a planning commission (which is not purely advisory, and often processes entitlements subject to the Permit Streamlining Act) would only be able to hold their meetings in the council chamber that was retrofitted to provide these new multimedia capabilities and couldn’t hold its meetings out in the community without a mobile audio/visual equipment and staff trained to handle that equipment. Many of our agencies fear they will need to reduce or eliminate their use of advisory bodies simply because of the sheer enormity of the cost of complying with AB 339. This means that AB 339, instead of creating more transparency, actually could result in less opportunities for members of the public to get involved in advising and recommending changes to their local government...

“...it is important to keep in mind that every mandate on the operation of Brown Act meetings creates a new opportunity for litigious individuals to take advantage of the Act to sue local public agencies, where Brown Act violations result in liability for a prevailing plaintiff’s attorney’s fees. Additionally, the opponents of a land-use decision could utilize these provisions or any technological lapse in operations of the meeting to allege a Brown Act violation and invalidate any decision made by the legislative body. The same dynamic applies if necessary translators, interpreters, or materials are not available or cannot be made ready by the meeting time.

“Lastly, we are disturbed that the most recent amended version of this bill exempts the Legislature and state government and its agencies from these onerous requirements. Once again, local governments are faced with a statewide mandate, ostensibly for the greater good that does not apply to state government or the Legislature. This ‘one rule for thee, another rule for me’ approach does nothing but create challenges for our members and codifies a double standard all too common in the state-local relationship. If the merits of this bill are so beneficial that they require the most expansive and expensive mandates on the operation of public meetings since the Brown Act’s inception, it is patently offensive for the state to be

exempted given that the impact of its decisions, statutory and regulatory, are far more wide-reaching than the impact of the decisions of any one local public agency on its jurisdiction.

“Collectively, we share the author’s commitment to access and transparency and recognize how key those values are to local democracy. However, AB 339 will burden local governments financially and practically at a time when they are already struggling and it will undoubtedly create situations where duly elected local government officials and their dedicated staff are stymied in their ability to efficiently execute the people’s business.”

REGISTERED SUPPORT / OPPOSITION:

Support

ACLU California Action [CO-SPONSOR]
 Leadership Counsel for Justice & Accountability [CO-SPONSOR]
 #youtoomovement
 Abundant Housing LA
 Ace Action (alliance of Californians for Community Empowerment)
 ACLU of California
 ACT for Women and Girls
 Alianza Coachella Valley
 Alliance for Children's Rights
 Alliance of Californians for Community Empowerment
 Arts for Healing and Justice Network
 Asian Americans Advancing Justice - California
 Asian Law Alliance
 Bet Tzedek
 Business for Good San Diego
 California Association of Nonprofits
 California Children’s Trust
 California Common CAUSE
 California Domestic Workers Coalition
 California Environmental Justice Alliance
 California Institute for Rural Studies
 California League of Conservation Voters
 California News Publishers Association
 California Safe Schools
 California Teachers Association
 California Work & Family Coalition
 California Yinby
 Californians Aware: the Center for Public Forum Rights
 Californians for Justice
 Californians for Pesticide Reform
 CEJA Action
 Center on Race, Poverty & the Environment
 Central California Asthma Collaborative
 Central California Environmental Justice Network
 Central Valley Air Quality Coalition
 Child Care Law Center

Citizens for Choice Nevada County
Clean Water Action
Climate Action Campaign
Climateplan
Coalition for Humane Immigrant Rights (CHIRLA)
Congregations Organized for Prophetic Engagement (COPE)
Council Member Zach Hilton, City of Gilroy
Councilmember Katie Valenzuela, City of Sacramento
Courage California
Courage Campaign
Cultiva LA Salud
Culver City for More Homes
Dignity and Power Now
Disability Rights Education & Defense Fund
Disability Rights Legal Center
Dolores Huerta Foundation
Drug Policy Alliance
Ella Baker Center for Human Rights
Fairmead Community & Friends
Faith in the Valley
First Amendment Coalition
Fresno Barrios Unidos
Fresno Building Healthy Communities
Fresno Metro Black Chamber of Commerce
Friends of Caltrain
Generation Up
Gente Organizada
Greenbelt Alliance
Hammond Climate Solutions
Hmong Innovating Politics
Housing California
Housing Is a Human Right - Orange County
Housing Leadership Council of San Mateo County
Indivisible CA Statestrong
Indivisible District 46
Inland Congregations United for Change
Inland Equity Partnership
Interfaith Movement for Human Integrity
Jakara Movement
Jewish Family & Community Services East Bay
Justice LA
LA Defensa
League of Women Voters of California
LGBTQ Center Orange County
Life Eldercare
Los Angeles Sunshine Coalition
Mental Health Advocacy Services
Mi Familia Vota
Mid-city Community Advocacy Network

NAACP Riverside
Nami Greater Los Angeles County
National Association of Social Workers, California Chapter
Nextgen California
Nolympics LA
Nourish California
Nuestra Casa
Nuestra Casa De East Palo Alto
Office of Los Angeles County Supervisor Hilda L. Solis
Orange County Emergency Response Coalition
Orange County Equality Coalition
Orange County LGBT Center
People for Housing - Orange County
People's Budget Orange County
People's Collective for Environmental Justice
People's Homeless Task Force Orange County
Pesticide Action Network
Planning and Conservation League
Policylink
Pomona Economic Opportunity Center
Public Advocates
Pueblo Unido CDC
Riverside NAACP
Root & Rebound
San Bernardino County Board of Education, Area B
San Diego Schools
San Francisco Senior and Disability Action
Seamless Bay Area
Senior & Disability Action
Silicon Valley Community Foundation
South County Homeless Task Force
The California Children's Trust
Time for Change Foundation
TODEC Inland Empire
Todec Legal Center
Unite Here Local 11
United Food and Commercial Workers, Western States Council
Voices for Progress
Western Center on Law & Poverty
White People 4 Black Lives
Women For: Orange County
Yalla Indivisible
Yimby Action
Youth Justice Education Clinic, Center for Juvenile Law and Policy, Loyola Law School

Opposition

Association of California School Administrators
Association of California Healthcare Districts

Big Bear Area Regional Wastewater Agency
California Acupuncture Board
California Association of Public Authorities for IHSS
California Downtown Association
California In-home Supportive Services Consumer Alliance
California Municipal Utilities Association (unless amended)
California School Boards Association
California Special Districts Association
California State Association of Counties
California Travel Association (CALTIA)
City of Chino Hills
City of Huntington Beach (unless amended)
City of Los Altos
Community College League of California
Dental Hygiene Board of California (unless amended)
League of California Cities
Orange County Local Agency Formation Commission
Orange County Sanitation District (unless amended)
Public Risk Innovation, Solutions, and Management (PRISM)
Rural County Representatives of California
Santa Barbara County Board of Supervisors
Solano County Board of Supervisors
Urban Counties of California

Analysis Prepared by: Angela Mapp / L. GOV. / (916) 319-3958