

ASSEMBLY THIRD READING
AB 339 (Lee and Cristina Garcia)
As Amended May 4, 2021
Majority vote

SUMMARY

Requires certain city council or county board of supervisors meetings to allow the public to attend and comment via telephone or internet.

Major Provisions

Requires, until December 31, 2023, all open and public meetings of a city council or a county board of supervisors that governs a jurisdiction containing at least 250,000 people to include an opportunity for members of the public to attend via a telephonic option or an internet-based service option.

Requires all open and public meetings to include an in-person public comment opportunity, except in specified circumstances during a declared state or local emergency.

Requires all open and public meetings to provide the public with an opportunity to comment on proposed legislation in person and remotely via a telephonic or an internet-based service option, as specified.

COMMENTS

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 allows local agencies 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.

If a legislative body of a local agency elects to use teleconferencing, it must post agendas at all teleconference locations and protect 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 must 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 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.

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."

Proposition 42, passed by voters in 2014, 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.

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.

Arguments in Support

A large coalition of supporters, including the Leadership Counsel for Justice and Accountability and ACLU California Action write, "AB 339 would enhance public participation and expand access by ensuring that constituents in jurisdictions of at least 250,000 people have opportunities to join and comment at open and public city council and county board of supervisor meetings, in-person and remotely, between January 1, 2022 to December 31, 2023. Despite claims that local governments might incur substantial costs to comply with the bill, and contentions that they are too fiscally strapped to do so, most if not all agencies covered by the measure have already voluntarily met the standards set out in the bill, even before they received the large influx of federal stimulus funds authorized this year. Thus, there will be no or virtually no local costs. There would not be significant local costs even if the bill included all local governments. Likewise, the bill imposes no state costs because it is not a reimbursable mandate.

"During the COVID-19 pandemic, remote meetings have provided a unique opportunity for Californians across the state to better participate in local government meetings. The past year has shown us how technology can help expand access and engagement with local government, and AB 339 builds on the gains of the past year to provide this access to more Californians now and once meetings return to in-person.

"Remote options 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

functions best when everyone is able to participate equally, and AB 339 makes important progress towards this goal. For these reasons, our organizations support AB 339."

Arguments in Opposition

A coalition of local government associations, including the League of California Cities and the California State Association of Counties, wrote in opposition to a prior version of this bill, "...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...

"...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...

"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."

FISCAL COMMENTS

According to the Assembly Appropriations Committee, estimated costs to cities and counties, likely in the low millions of dollars statewide, to comply with the bill's provisions. These costs include one-time information technology (IT) investments and ongoing costs for additional staff, licensing and IT support. Each of the 26 counties and 15 cities covered by this bill is likely to incur costs in the low hundreds of thousands to comply.

However, these costs are not reimbursable by the state pursuant to Proposition 42, passed by the voters in 2014, which requires all local governments to comply with the Brown Act, but also eliminated reimbursement to local agencies for the costs of complying.

VOTES

ASM LOCAL GOVERNMENT: 7-0-1

YES: Aguiar-Curry, Bloom, Boerner Horvath, Ramos, Luz Rivas, Robert Rivas, Voepel
ABS, ABST OR NV: Lackey

ASM APPROPRIATIONS: 11-2-3

YES: Lorena Gonzalez, Calderon, Carrillo, Chau, Gabriel, Levine, Quirk, Robert Rivas, Akilah Weber, Luz Rivas, Holden

NO: Bigelow, Megan Dahle

ABS, ABST OR NV: Davies, Fong, Eduardo Garcia

UPDATED

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