
SENATE COMMITTEE ON GOVERNANCE AND FINANCE

Senator Mike McGuire, Chair
2021 - 2022 Regular

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Tax Levy: No
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LOCAL GOVERNMENT: OPEN AND PUBLIC MEETINGS

Requires, until December 31, 2023, that city councils and boards of supervisors in jurisdictions over 250,000 residents provide both in-person and teleconference options for the public to attend their meetings.

Background

Public access. Article I, Section 3 of the California Constitution guarantees that “the people have the right to instruct their representatives, petition government for redress of grievances, and assemble freely to consult for the common good.” This includes a right to access information concerning the meetings and writings of public officials. To ensure that the right to openly scrutinize public agencies is maintained, the Constitution requires local agencies to comply with certain state laws that outline the basic requirements for public access to meetings and public records. If a subsequent bill modifies these laws, it must include findings demonstrating how it furthers the public’s access to local agencies and their officials.

Brown Act. The Ralph M. Brown Act provides guidelines for how local agencies must hold public meetings. Among other provisions, the Act requires that meetings of the legislative body of a local agency be open and public. The Brown Act was originally enacted in 1953 and has been amended numerous times since then.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 in subsequent years:

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 local agencies to notice meetings in advance, including the posting of an agenda, and requires these meetings to be open and accessible to the public. The local agency cannot require members of the public to register or provide information as a condition of participation. The Brown Act also 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 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.”

If a member of the public, including the respective district attorney, believes a local agency violated the Brown Act, it must first send an order to the local agency to correct the violation. If the local agency disagrees with the complaint and does not correct it, the submitter can pursue the complaint through the courts. If the court agrees with the complaint, outcomes range from invalidating certain actions of the local agency to a misdemeanor criminal conviction.

Teleconferencing and the Brown Act. The Brown Act first allowed teleconference meetings 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 travelled to participate, and were concerned that these distances prohibited some people from attending at all. AB 3191 (Frazee, 1988) responded to these concerns by authorizing the legislative body of a local agency to use 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 public. 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 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.

Emergency Services Act. The ESA gives the Governor the authority to proclaim a state of emergency in an area affected or likely to be affected by a disaster, when requested to do so by a designated local government official, or if the Governor finds that local authority is inadequate to cope with the emergency. Local governments may also issue local emergency proclamations, which are a prerequisite for requesting the Governor’s Proclamation of a State of Emergency.

The ESA grants the Governor certain special powers during a declared state of emergency, which are in addition to any other existing powers. For example, the ESA empowers the Governor to expend any appropriation for support of the ESA in order to carry out its provisions, as well as the authority to make, amend, and rescind orders and regulations necessary to carry out the ESA. The orders and regulations have the force and effect of law.

The ESA also allows a local emergency to be proclaimed by the governing body of a city, county, or city and county, or by an official designated by ordinance adopted by that governing body. A local emergency cannot remain in effect for a period in excess of seven days, unless it has been ratified by the governing body. The governing body must review the need for continuing the local emergency at least once every 60 days until the governing body terminates the local emergency. The governing body must proclaim the termination of the local emergency at the earliest possible date that conditions warrant.

Public meetings during the COVID-19 pandemic. The COVID-19 pandemic, also known as the coronavirus pandemic, is an ongoing, widespread outbreak of the disease caused by a strain of the coronavirus. This severe, acute respiratory syndrome was first identified in Wuhan, China in late December 2019. The first cases in the United States occurred in early 2020 and the first California case was confirmed in late January. To control the spread of the disease, California, and other states, issued mandatory “stay-at-home” orders. This pandemic left thousands out of work and struggling to pay for necessities, and businesses struggling to stay in business. California’s unemployment was 10.1 percent in 2020 and total nonfarm jobs decreased by 1,350,500 (a 7.7 percent decrease) from March 2020 to March 2021. Public agencies also had to adjust to new ways of conducting business because of the public safety risk associated with meeting in person.

In March 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.”

On June 11, the Governor issued Executive Order N-08-21 notifying local agencies and the public that previous executive orders concerning the conduct of public meetings apply through September 30, 2021.

During the pandemic, many local agencies relied on teleconference services to conduct regular basis. Now that some pandemic regulations have begun to loosen, the author wants to take steps to expand the public’s access to local agency meetings via in-person and teleconference options.

Proposed Law

Assembly Bill 339 requires, in cities or counties with over 250,000 residents, the city council or county board of supervisors to comply with the following requirements:

- All open and public meetings must include an opportunity for the public to attend via a two-way telephonic or two-way internet based service option. If the legislative body elects to provide a two-way internet-based service option, the local agency must post and provide a call-in option, and activate automatic captioning if applicable;
- If the legislative body has, as of June 15, 2021, provided video streaming of all open and public meetings, the legislative body must continue to provide that video streaming;
- Unless there are laws prohibiting in-person meetings in a declared state of emergency, meetings must include an in-person public comment opportunity which allows the public to report to a designated site and provide in-person comments. The location of the site and any relevant instructions must be included with the agenda;
- The local agency must ensure that the public participating via a two-way telephonic or internet-based option has the opportunity to comment on agenda items with the same time allotment as a person attending in-person.

The measure defines its terms and includes findings and declarations support its intent and purposes.

The measure's provisions sunset on December 31, 2023.

State Revenue Impact

No estimate.

Comments

1. Purpose of the bill. 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."

2. Let the dust settle? When the COVID-19 pandemic required the public, including local elected officials, to stay at home to avoid spreading the virus, local agencies recognized that the Brown Act's teleconferencing provisions did not provide the flexibility they felt necessary to continue conducting their business without risking further spread of the virus. Soon after the start of the pandemic, the Governor's executive order provided local agencies the flexibility they wanted to continue their business, while still providing opportunities for the public to participate via teleconference services. While local agencies have until the end of September 2021 to use this flexibility, the calls to amend the Brown Act came immediately. Local agencies found the flexibility teleconferencing provides useful, especially for members who had to travel to long distances to attend meetings. Members of the public who previously were unable to attend meetings could now call in and provide comments, bringing new voices into local agency meetings. However, at this point limited data and information have been collected to determine if, and how, the Brown Act should be amended to provide more flexibility for local agencies and the public. Despite the limited information available, AB 339 imposes new requirements for city councils and boards of supervisors in jurisdictions over 250,000 residents to provide both in-person and teleconference options for the public to participate. Should the Legislature wait to

make significant changes to the Brown Act until the pandemic is over and more information is available?

3. Equal treatment. Until this point, the Brown Act has subjected all local agencies, no matter how big or how small, to the same public meeting requirements. AB 339 departs from this practice, and creates new rules for cities and counties over 250,000, which includes 15 cities and 26 counties. On the one hand, larger local agencies may be more able to comply with AB 339's requirements to offer in-person and teleconference meeting access to the public after the pandemic. According to the author, jurisdictions that meet these criteria already meet many of the bill's requirements, and provide video streaming of their meetings. AB 339's population threshold relieves the remaining 467 cities and 32 counties of complying with these additional responsibilities, as well as all special districts. On the other hand, should the level of public access you receive depend on the size of the city or county you live in? The Committee may wish to consider the precedent this bill creates for further changes to public meeting requirements based on population or other general characteristics of a local agency?

4. Show me the money. The pandemic has shed new light on public participation in local meetings. While Governor's executive order helped remove some barriers for local agencies to continue to conduct their business, it did not eliminate all costs and responsibilities. Many local agencies used the flexibility from the executive order to shift to teleconference or online meetings. To stand up these meetings, local agencies identified a teleconference service or developed their own, contracted with companies for teleconferencing services, and dealt with myriad challenges that came with conducting business in an unprecedented fashion. Some larger agencies had their own dedicated IT staffs to help manage the transition. Other rural local agencies had difficulty connecting to the internet. Many financially strapped local agencies incurred additional costs. AB 339 requires cities and counties over 250,000 to continue to provide teleconferencing and in some cases, expand the services they provide. Proposition 42 was approved by voters in 2014, and requires all local governments to comply with the Public Records Act and the Brown Act, including 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. While many local agencies may already have incurred these costs to cover public meetings during the pandemic, if complying with AB 339's requirements results in additional costs, those moneys will have to come from city and county general funds, which support other core public services. Local agencies may have to seek additional revenue, cut other services, or use budget reserves to fund these new requirements if they have not implemented them already. It is unclear how significant these costs will be for these local agencies. Should the Legislature impose these new requirements without additional financial support?

5. Public participation during the pandemic. The pandemic helped shift meetings onto services that the public could use without having to find their way to the actual meeting location. Californians were able to call-in and address their local representatives directly. However, low-income and rural communities may not have the same level of access to these teleconference services. According to the Public Policy Institute of California, in 2017, 74% of households had broadband subscriptions at home but 45% of low-income households and 41% of rural households do not. AB 339 requires city councils and boards of supervisors to provide teleconference or internet access to meetings in perpetuity. Have local agencies taken adequate steps to ensure that everyone has equal access to these public meetings regardless of whether they are in person or online?

6. Let's be clear. AB 339 requires certain local agencies that have, as of June 15, 2021, provided video streaming of all open and public meetings to continue to provide video streaming. However, the language does not clearly identify how many meetings these local agencies must have streamed to be subject to this requirement. The Committee may wish to consider amending the bill to specify the amount of meetings that a local agency must have streamed to be subject to this requirement.

7. Sunset. AB 339 sunsets on December 31, 2023. As such, local governments would have to comply with these additional requirements for two years, at which point the Legislature could decide whether additional legislative action is necessary.

8. Charter city. The California Constitution allows cities that adopt charters to control their own "municipal affairs." In all other matters, charter cities must follow the general, statewide laws. Because the Constitution doesn't define "municipal affairs," the courts determine whether a topic is a municipal affair or whether it's an issue of statewide concern. AB 339 says that its statutory provisions apply to charter cities. To support this assertion, the bill includes a legislative finding that ensuring access to adequate public meetings is a matter of statewide concern.

9. Related legislation. The Legislature is considering a couple bills that amend the Brown Act:

- SB 274 (Wieckowski, 2021) creates a process for the public to receive local agency meeting materials by email, if technologically feasible. The bill is currently pending in the Assembly Local Government Committee.
- AB 361 (Robert Rivas, 2021) allows local agencies to use teleconferencing without complying with specified Brown Act restrictions in certain state and local emergencies. The bill is currently pending in the Senate Governance and Finance Committee.

10. Coming and going. The Senate Rules Committee ordered a double-referral of AB 339: first, to the Committee on Governance and Finance to consider its impact on local governments and second to the Committee on Judiciary to consider its impacts on the public's right to access public meetings.

Assembly Actions

Assembly Local Government Committee:	7-0
Assembly Appropriations Committee:	11-2
Assembly Floor:	54-9

Support and Opposition (6/28/21)

Support: Jovanka Beckles - AC Transit Board Member; Janice Li - BART Board of Directors Member; Alan Lee - Big Bear Lake City Councilmember; Katie Valenzuela - Sacramento City Councilmember; Megan Beaman-Jacinto - Coachella City Councilmember; Miguel Arias - Fresno City Councilmember; Suzie Price - Long Beach City Councilmember; Bryan Osorio - Mayor of Delano; Rich Tran - Mayor of Milpitas; Karina Dominguez - Milpitas City Councilmember; Nithya Raman - LA City Councilmember 4th District; Christy Holstege - Palm Springs Mayor; Gayle Mclaughlin - Richmond City Councilmember; Rita Loof - San Bernardino County Board of Education, Area B; Monica Montgomery Steppe - San Diego City Councilmember; Jessie Lopez - Santa Ana City Councilmember; Cindy Chavez -

Santa Clara Board of Supervisors; Bonnie Lieberman - Santa Clara Unified School District Governing Board Member; Vickie Fairchild - Santa Clara Unified School District Governing Board Member; Justin Cummings - Santa Cruz City Councilmember; Jon Wizard - Seaside City Council Member; James Coleman - South San Francisco Councilmember; Terry Taplin - City of Berkeley Councilmember; Zach Hilton, City of Gilroy Councilmember; Abundant Housing LA; California Environmental Justice Alliance (CEJA) Action; California Faculty Association; California Teachers Association; Dolores Huerta Foundation; East Bay Yimby; East Valley Indivisibles; Ella Baker Center for Human Rights; Indivisible San Jose; League of Women Voters of California; National Association of Social Workers, California Chapter; Oceana; Operations Checks and Balances (An Indivisible group); Pacific Media Workers Guild (the Newsguild-communications Workers of America Local 39521); Peninsula for Everyone; People for Housing - Orange County; San Francisco Yimby; Santa Cruz Yimby; Sierra Club California; South Bay Yimby; Streets for People Bay Area; Time for Change Foundation; Urban Environmentalists; Yimby Action; 25 Individuals

Opposition: California Association of Clerks & Election Officials; County of Kern; Solano County Board of Supervisors; South Bay Cities Council of Governments; Torrance; City of

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