
THIRD READING

Bill No: AB 339
Author: Lee (D) and Cristina Garcia (D), et al.
Amended: 9/3/21 in Senate
Vote: 21

SENATE GOVERNANCE & FIN. COMMITTEE: 5-0, 7/1/21
AYES: McGuire, Nielsen, Durazo, Hertzberg, Wiener

SENATE JUDICIARY COMMITTEE: 9-0, 7/13/21
AYES: Umberg, Durazo, Gonzalez, Hertzberg, Jones, Laird, Skinner, Stern,
Wieckowski
NO VOTE RECORDED: Borgeas, Caballero

SENATE APPROPRIATIONS COMMITTEE: Senate Rule 28.8

ASSEMBLY FLOOR: 54-9, 6/2/21 - See last page for vote

SUBJECT: Local government: open and public meetings

SOURCE: Author

DIGEST: This bill 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.

Senate Floor Amendments of 9/3/21 remove cross-references to the United States Code, and instead require local agencies to conduct meetings consistent with any applicable language access and other nondiscrimination obligations.

Senate Floor Amendments of 8/25/21 address chaptering issues.

ANALYSIS:

Existing law:

- 1) Guarantees in Article I, Section 3 of the California Constitution that the people have the right to instruct their representatives, petition government for redress

of grievances, assemble freely to consult for the common good, which includes a right to access information concerning the meetings and writings of public officials.

- 2) 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.
- 3) Enacts the Ralph M. Brown Act, which outlines how local agencies must hold public meetings.
- 4) 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.
- 5) 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.
- 6) 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.
- 7) 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 votes must be taken by rollcall.
- 8) Provides that, 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.
- 9) Requires that, 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.

This bill:

- 1) Requires, in cities or counties with over 250,000 residents, the city council or county board of supervisors to comply with the following requirements:
 - a) 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;
 - b) If the legislative body has, as of June 15, 2021, provided video streaming of at least one open and public meeting, the legislative body must continue to provide that video streaming;
 - c) 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; and
 - d) 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.
- 2) Provides that local agencies must conduct meetings consistent with any applicable state and federal civil rights laws.
- 3) Defines its terms and includes findings and declarations support its intent and purposes.
- 4) Sunsets its provisions on December 31, 2023.

Background

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.

Comments

- 1) *Purpose of this 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 Legislature 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.

Related/Prior Legislation

SB 274 (Wieckowski, 2021) requires a local agency with an internet website, or its designee, to email a copy of, or website link to, the agenda or a copy of all the documents constituting the agenda packet if the person requests that the items be delivered by email. If a local agency determines it to be technologically infeasible to send a copy of the documents or a link to a website that contains the documents by email or by other electronic means, the legislative body or its designee must send by mail a copy of the agenda or a website link to the agenda and to mail a copy of all other documents constituting the agenda packet, as specified.

AB 361 (Robert Rivas, 2021) creates, until January 1, 2024, an exemption to teleconferenced public meeting requirements for local legislative bodies during states of emergency, as specified.

FISCAL EFFECT: Appropriation: No Fiscal Com.: Yes Local: Yes

SUPPORT: (Verified 9/3/21)

Abundant Housing LA
ACLU California Action
Alan Lee, Member, Big Bear Lake City Council
Alliance for Children's Rights
Bryan Osorio, Mayor, Delano

California Common Cause
California Environmental Justice Alliance
California Faculty Association
California League of Conservation Voters
California News Publishers Association
California Teachers Association
California Work & Family Coalition
Californians Aware
Californians for Pesticide Reform
Central California Asthma Collaborative
Central Valley Air Quality Coalition
CEJA Action
Change Begins with ME
Christy Holstege, Mayor, Palm Springs
Cindy Chavez, Member, Santa Clara Board of Supervisors
City of Rancho Palos Verdes
Climate Action Campaign
Congregations Organized for Prophetic Engagement
Courage California
Cultiva La Salud
Disability Rights California
Dolores Huerta Foundation
East Bay YIMBY
Ella Baker Center for Human Rights
Faith in the Valley
First Amendment Coalition
Fresno Building Healthy Communities
Fresno Metro Black Chamber of Commerce
Gayle McLaughlin, Member, Richman City Council
GenUP
Hammond Climate Solutions
Hmong Innovating Politics
Housing is a Human Right Orange County
Howard Jarvis Taxpayers Association
Indivisible CA State Strong
Indivisible San Francisco
Indivisible San Jose
James Coleman, Member, South San Francisco City Council
Jessie Lopez, Member, Santa Ana City Council
Jon Wizard, Member, Seaside City Council

Justin Cummings, Member, Santa Cruz City Council
Karina R. Dominguez, Member, Milpitas City Council
Katie Valenzuela, Member, Sacramento City Council
Konstantine Anthony, Member, Burbank City Council
League of Women Voters of California
Lucas Ramirez, Vice Mayor, City of Mountain View
Megan Beaman-Jacinto, Member, Coachella City Council
Miguel Arias, Member, Fresno City Council
Monica Montgomery Steppe, Member, San Diego City Council
National Association of Social Workers, California Chapter
NextGen Policy
Nithya Raman, Member, Los Angeles City Council
Northern Neighbors
Orange County Equality Coalition
Pacific Media Workers Guild
Peninsula for Everyone
People for Housing Orange County
People's Budget OC
Public Advocates
Pueblo Unido Community Development Corporation
Rich Tran, Mayor, Milpitas
San Francisco YIMBY
Santa Cruz YIMBY
Sean Elo-Rivera, Member, San Diego City Council
Senior & Disability Action
South Bay YIMBY
Southside Forward
Streets for People
Suzie Price, Member, Long Beach City Council
Terry Taplin, Member, Berkeley City Council
Together We Will/Indivisible—Los Gatos
UC Merced Community and Labor Center
Urban Environmentalists
YIMBY Action
Youth Justice Education Clinic, Loyola Law School
Zach Hilton, Member, Gilroy City Council
Five Individuals

OPPOSITION: (Verified 9/3/21)

Association of California Healthcare Districts

Association of California School Administrators
California Association of Clerks and Election Officials
California Association of Joint Powers Authorities
California Association of Public Authorities for IHSS
California Downtown Association
California In-Home Supportive Services Consumer Alliance
California School Boards Association
California State Association of Counties
City of Big Bear
City of Torrance
City of Yorba Linda
Community College League of California
County of Kern
County of Santa Barbara
County of Solano
League of California Cities
Public Risk Innovation, Solutions And Management
Rural County Representatives of California
Santa Barbara County Executive Office
South Bay Cities Council of Governments
Urban Counties of California

ASSEMBLY FLOOR: 54-9, 6/2/21

AYES: Aguiar-Curry, Arambula, Bauer-Kahan, Bennett, Berman, Bloom, Boerner
Horvath, Bryan, Burke, Calderon, Carrillo, Cervantes, Chau, Chiu, Cooley,
Davies, Friedman, Gabriel, Gallagher, Cristina Garcia, Eduardo Garcia, Gipson,
Lorena Gonzalez, Holden, Irwin, Jones-Sawyer, Kalra, Lee, Levine, Low,
Maienschein, McCarty, Medina, Mullin, Muratsuchi, Nazarian, Petrie-Norris,
Quirk, Quirk-Silva, Ramos, Reyes, Luz Rivas, Robert Rivas, Blanca Rubio,
Salas, Santiago, Stone, Ting, Villapudua, Ward, Akilah Weber, Wicks, Wood,
Rendon

NOES: Cunningham, Megan Dahle, Lackey, O'Donnell, Seyarto, Smith,
Valladares, Voepel, Waldron

NO VOTE RECORDED: Bigelow, Chen, Choi, Cooper, Daly, Flora, Fong,
Frazier, Gray, Grayson, Kiley, Mathis, Mayes, Nguyen, Patterson, Rodriguez

Prepared by: Jonathan Peterson / GOV. & F. / (916) 651-4119

9/7/21 16:56:09

**** END ****