

GOVERNOR'S VETO
AB 339 (Lee and Cristina Garcia)
As Enrolled September 13, 2021
Majority vote

SUMMARY

Requires, until December 31, 2023, certain city council or county board of supervisors meetings to allow the public to attend and comment via telephone or internet.

Senate Amendments

- 1) Specify that either a telephonic or internet-based service option for attending public meetings offer two-way operability.
- 2) Require, if a city council or a county board of supervisors elects to provide a two-way internet-based service option, the local agency to publicly post and provide a call-in option, and activate any automatic captioning function during the meeting if an automatic captioning function is included with the system.
- 3) Require, if a city council or county board of supervisors has, as of June 15, 2021, provided video streaming of at least one open and public meeting, the city council or county board of supervisors shall continue to provide that video streaming.
- 4) Define "video streaming" to mean media in which the data from a live filming or a video file is continuously delivered via the internet to a remote user, allowing a video to be viewed online by the public without being downloaded on a host computer or device.
- 5) Remove provisions requiring all members of the public to be entitled to participate in open and public meetings, regardless of national origin or language ability.
- 6) Require local agencies to conduct meetings subject to the Brown Act consistent with applicable state and federal civil rights laws, including, but not limited to, any applicable language access and other nondiscrimination obligations.
- 7) Make additional technical, clarifying and conforming changes.
- 8) Add language to address chaptering issues with AB 361 (Robert Rivas), Chapter 165, Statutes of 2021.

Governor's Veto Message

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

While I appreciate the author's intent to increase transparency and public participation in certain local government meetings, this bill would set a precedent of tying public access requirements to the population of jurisdictions. This patchwork approach may lead to public confusion. Further, AB 339 limits flexibility and increases costs for the affected local jurisdictions trying to manage their meetings.

Additionally, this bill requires in-person participation during a declared state of emergency unless there is a law prohibiting in-person meetings in those situations. This could put the health and safety of the public and employees at risk depending on the nature of the declared emergency.

I recently signed urgency legislation that provides the authority and procedures for local entities to meet remotely during a declared state of emergency. I remain open to revisions to the Brown Act to modernize and increase public access, while protecting public health and safety. Unfortunately, the approach in this bill may have unintended consequences.

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 coalition of supporters, including ACLU California Action and the First Amendment Coalition, 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."

Arguments in Opposition

A coalition of local government associations, school groups and others, including the League of California Cities and the California State Association of Counties, write, "While this measure has been amended significantly from when it was introduced, it still imposes significant unreimbursed costs to affected local agencies and contains fatal flaws that have the potential to hinder the goals of transparency and access..."

"First, AB 339 still fails to provide flexibility to local governments to manage their own affairs...Second, 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...Third, 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...Fourth, over the last several months our organizations have been working with various stakeholders to discuss what

modernizing the Brown Act could look like and how the best practices local government have learned can be elevated to a discussion of standards and protocols...Lastly, we continue to be disturbed that the most recent amended version of this bill continues to exempt the Legislature...

"Collectively, we share the author's commitment to access and transparency and recognize how key those values are to local democracy. We continue to seek the time necessary to develop the right policy solutions that empower communities by building on learned experiences and best practices."

FISCAL COMMENTS

According to the Senate Appropriations Committee, pursuant to Senate Rule 28.8, negligible state costs.

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

ASSEMBLY FLOOR: 54-9-16

YES: 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

NO: Cunningham, Megan Dahle, Lackey, O'Donnell, Seyarto, Smith, Valladares, Voepel, Waldron

ABS, ABST OR NV: Bigelow, Chen, Choi, Cooper, Daly, Flora, Fong, Frazier, Gray, Grayson, Kiley, Mathis, Mayes, Nguyen, Patterson, Rodriguez

SENATE FLOOR: 25-8-7

YES: Archuleta, Atkins, Becker, Bradford, Cortese, Durazo, Gonzalez, Hertzberg, Hueso, Kamlager, Laird, Leyva, Limón, McGuire, Min, Newman, Ochoa Bogh, Pan, Portantino, Roth, Rubio, Skinner, Umberg, Wieckowski, Wiener

NO: Borgeas, Caballero, Dahle, Dodd, Grove, Hurtado, Nielsen, Wilk

ABS, ABST OR NV: Allen, Bates, Eggman, Glazer, Jones, Melendez, Stern

ASSEMBLY FLOOR: 58-7-15

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

NO: Bigelow, Megan Dahle, Lackey, O'Donnell, Seyarto, Smith, Valladares

ABS, ABST OR NV: Calderon, Chen, Choi, Cooley, Daly, Flora, Fong, Frazier, Grayson, Kiley, Low, Mathis, Mayes, Nguyen, Patterson

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