
SENATE COMMITTEE ON GOVERNANCE AND FINANCE

Senator Mike McGuire, Chair
2021 - 2022 Regular

Bill No: SB 274
Author: Wieckowski
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Consultant: Peterson & Baker

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Tax Levy: No
Fiscal: Yes

LOCAL GOVERNMENT MEETINGS: AGENDA AND DOCUMENTS

Creates a process for the public to receive local agency meeting materials by email, if technologically feasible.

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 The Brown Act was originally enacted in 1953 and has been amended numerous times since then.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 has remained 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 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 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 members 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.

Any member of the public can request that a local agency mail them a copy of the meeting materials. Upon receiving this request, the local agency must mail the meeting materials when it publicly posts a meeting agenda or distributes the meeting materials to a majority of its legislative body, whichever occurs first. Members of the public must renew their request for meeting materials each year. The local agency can charge a fee for this service, which must not exceed the cost of providing the service. Unlike other violations of the Brown Act, not receiving meeting materials is not grounds for invalidating a local agency's actions.

To ensure that the public receives meeting materials in a timely fashion, the author wants to create a process to receive meeting materials by email.

Proposed Law

Senate Bill 274 requires local agencies that have websites to email a copy of, or provide a link to, the agenda packet, if an individual requests the local agency to deliver these items by email. If the local agency determines that it is not technologically feasible to send a copy of, or provide a link to, the agenda packet, the local agency must mail a copy of the agenda, or send a link to the agenda, and mail all other documents.

SB 274 includes findings and declarations to support its intent to promote greater public access to local agency meeting materials.

State Revenue Impact

No estimate.

Comments

1. Purpose of the bill. According to the author, "SB 274 will make it easier for constituents to become informed about the actions under consideration by their local governments and to voice their concerns in a timely manner. The current law requires legislative bodies to send out agenda packets only by mail when people request them. The issue with this method is that sometimes mailed agenda packets arrive to the recipient after the meeting is over. My bill would allow people to receive those documents by email instead of mail, a faster, easier and more efficient way for both the governing bodies and constituents."

2. Balancing act. SB 274 attempts to balance increasing public access by requiring local agencies to email meeting materials if a member of the public requests them in that manner, with a recognition that this requirement may be easier for some local agencies than others due to their limited internet access and lack of a website. For example, SB 929 (McGuire, 2018) required all special districts to have a website unless the district adopts a resolution that a hardship exists that prevents the district from establishing or maintaining an Internet website. The bill exempts these special districts without websites from SB 274's requirements, but other smaller local agencies with websites could experience a heavier burden in accommodating email requests than other larger agencies. In the case of a body with little technological capacity, or with a small staff, the

local agency can determine if it is technologically infeasible for them to email meeting information, and instead send an electronic copy of the agenda, or send a link to the agenda, and mail all other documents. The Committee may wish to consider whether SB 274 achieves the appropriate balance between public access and ensuring all local agencies can comply with its requirements without significant operational challenges.

3. Power to the people. The extent to which members of the public have had difficulties accessing meeting materials, or had requests for meeting materials via email denied, is unclear. Although existing law requires local agencies to send meeting materials when the agenda is publicly posted or distributed to a majority of members of the body, the bill does not ensure that meeting materials are actually received before a meeting occurs, whether mailed or emailed. Unlike other Brown Act violations, not sending these materials in a timely fashion does not result in invalidating a local agency's actions, which lessens the incentive for local agencies to comply with these public notice requirements. The Committee may wish to consider whether the bill meaningfully improves public access, or whether additional changes are necessary.

4. Mandate. The California Constitution requires the state to reimburse local governments for the costs of new or expanded state mandated local programs. Because SB 274 imposes new public meeting requirements on local agencies, Legislative Counsel says that it imposes a new state mandate. However, the measure provides that the state shall not reimburse local agencies for these increased costs because it promotes greater public access to the writings of local public officials. State mandates that concern constitutional requirements to provide the public access to public meetings do not require reimbursement (Article XIII B, Sec. 6).

5. Recent legislation. Last year, the author introduced SB 931 (Wieckowski), which, in its amended form, is identical to SB 274. However, the author decided not to move the bill forward. Additionally, the COVID-19 pandemic has moved many local agency meetings online and has led some legislators to question whether further changes to the Brown Act may be necessary to incorporate technology into the public meeting process. At least five bills making changes to the Brown Act are pending hearings in the Assembly.

6. Technical. On page 2, line 12 of the bill, committee staff recommends replacing the term "mail" with "email" to correct a drafting error.

Support and Opposition (3/22/21)

Support: American Federation of State, County, and Municipal Employees, AFL-CIO; Association of California Water Agencies; California Association of Local Agency Formation Commissions; California Association of Realtors; California Municipal Utilities Association; California News Publishers Association Services, Inc.; California State PTA; California Taxpayers Association; Oakland Privacy.

Opposition: None listed.