

CONCURRENCE IN SENATE AMENDMENTS

AB 361 (Robert Rivas)

As Amended September 3, 2021

2/3 vote. Urgency

SUMMARY

Allows, until January 1, 2024, local agencies to use teleconferencing without complying with specified Ralph. M Brown Act restrictions in certain state emergencies, and provides similar authorizations, until January 31, 2022, for state agencies subject to the Bagley-Keene Open Meetings Act and legislative bodies subject to the Gloria Romero Open Meetings Act of 2000.

Senate Amendments

- 1) Add language amending the Bagley-Keene Open Meeting Act and the Gloria Romero Open Meetings Act of 2000 to suspend, until January 31, 2022, specified requirements of those acts, including requirements that each teleconference location be accessible to the public and that members of the public be able to address the legislative body at each teleconference location, as specified.
- 2) Make the following changes to the provisions of the bill governing local agency meetings under the Brown Act:
 - a) Narrow the provisions of the bill to only apply during state-declared emergencies and make conforming changes.
 - b) Clarify that an individual desiring to provide public comment through the use of an online platform may be required to register by that online platform, as specified, and clarifies additional requirements for such registration.
 - c) Clarify requirements for timed and untimed public comment periods, as specified.
 - d) Add a sunset date of January 1, 2024.
- 3) Add an urgency clause.
- 4) Add language to address chaptering issues with AB 339 (Lee and Cristina Garcia) of the current legislative session.

COMMENTS

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 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 shall 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.

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."

According to the Author

"When the COVID-19 pandemic started, public agencies struggled to conduct their meetings in compliance with the public accessibility and transparency requirements of the Brown Act and Bagley-Keene Acts while still abiding by stay-at-home orders. As a result, Governor Newsom issued several executive orders (EOs) to grant agencies the flexibility to meet remotely during the pandemic. However, these EOs are expiring soon, meaning that these flexibilities will not apply to future emergencies like wildfires, floods, pandemics, or other events that make in-person gatherings dangerous. Local and state agencies will again struggle to provide essential services like water, power, and fire protection at a time when constituents will need those services the most.

"AB 361 will guarantee that local and state bodies can meet the needs of the communities they serve by allowing them to temporarily hold meetings remotely. This bill will also require the opportunity for public to join via telephone or video conference to ensure that all members of the public can participate safely."

Arguments in Support

A coalition of supporters, including the California Special Districts Association (sponsor), the California State Association of Counties, the League of California Cities, and others, writes, "AB 361 would codify portions of the Governor of California's Executive Orders ('the Orders') from March 2020 relating to the Ralph M. Brown Act ('the Brown Act'), which made it safe for local agencies to meet. The Orders limited their operation to the time period during which state or local public health officials have imposed or recommend social distancing measures. In similar fashion, the provisions of this bill are operative only in circumstances when it is unsafe for the members of the legislative body of the local agency to meet in person. The bill's provisions are

only able to be utilized pursuant to a formal state of emergency, and the declared emergency must directly threaten the safety of the agency members, staff, or the public. By establishing such an extraordinarily high standard for agencies to meet remotely, this bill avoids creating a 'one-size-fits-all' approach that would otherwise apply in all future emergencies. An agency would not be able to rely upon these provisions to meet remotely if the emergency does not pose a threat to the agency."

Arguments in Opposition

A coalition of opponents, including ACLU California Action, Californians Aware, the First Amendment Coalition, and others state, "We appreciate that under circumstances like the recent public health emergency accommodations may temporarily be needed to allow local governments to conduct necessary business. Nevertheless, deleting fundamental and longstanding public protections should be extremely rare and highly circumscribed. Unfortunately, AB 361 goes too far by exempting local governments from simple and important obligations to identify the location of each teleconference location, to make the teleconference locations accessible to the public, and to require that a quorum participate within the geographic boundaries of the body's jurisdiction. Moreover, the conditions under which these obligations would be canceled are far too lax."

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

ASSEMBLY FLOOR: 62-4-12

YES: Aguiar-Curry, Arambula, Bauer-Kahan, Bennett, Berman, Bloom, Boerner Horvath, Burke, Carrillo, Cervantes, Chau, Chiu, Choi, Cooley, Cooper, Cunningham, Daly, Frazier, Friedman, Gallagher, Cristina Garcia, Eduardo Garcia, Gipson, Lorena Gonzalez, Grayson, Holden, Irwin, Jones-Sawyer, Kiley, Lackey, Lee, Levine, Low, Maienschein, Mathis, McCarty, Medina, Mullin, Muratsuchi, Nazarian, O'Donnell, Petrie-Norris, Quirk, Quirk-Silva, Ramos, Reyes, Luz Rivas, Robert Rivas, Rodriguez, Blanca Rubio, Salas, Santiago, Seyarto, Stone, Ting, Villapudua, Voepel, Waldron, Ward, Akilah Weber, Wicks, Rendon

NO: Bigelow, Megan Dahle, Davies, Nguyen

ABS, ABST OR NV: Calderon, Chen, Flora, Fong, Gabriel, Gray, Kalra, Mayes, Patterson, Smith, Valladares, Wood

UPDATED

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