
THIRD READING

Bill No: AB 361
Author: Robert Rivas (D)
Amended: 9/3/21 in Senate
Vote: 27 - Urgency

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

SENATE JUDICIARY COMMITTEE: 10-0, 7/13/21
AYES: Umberg, Borgeas, Caballero, Durazo, Gonzalez, Hertzberg, Jones, Laird,
Skinner, Wieckowski
NO VOTE RECORDED: Stern

SENATE JUDICIARY COMMITTEE: 9-1, 9/9/21 (Pursuant to Senate Rule
29.10)
AYES: Umberg, Borgeas, Caballero, Durazo, Gonzalez, Hertzberg, Laird,
Wieckowski, Wiener
NOES: Jones
NO VOTE RECORDED: Stern

SENATE APPROPRIATIONS COMMITTEE: Senate Rule 28.8

ASSEMBLY FLOOR: 62-4, 5/17/21 - See last page for vote

SUBJECT: Open meetings: state and local agencies: teleconferences

SOURCE: California Special Districts Association

DIGEST: This bill creates, until January 1, 2024, an exemption to teleconferenced public meeting requirements for local legislative bodies during states of emergency, as specified; and, until January 31, 2022, a similar exemption to teleconferenced public meeting requirements for certain state bodies, as specified.

Senate Floor Amendments of 9/3/21 add chaptering amendments to resolve conflicts with AB 339; add remote meeting provisions to the Bagley-Keene Open Meetings Act (Bagley-Keene Act) and the Gloria Romero Open Meetings Act of 2000 (Gloria Romero Act) that will sunset January 31, 2022; and add legislative findings related to the need for the bill's limitations on the public right of access to state and local public meetings.

Senate Floor Amendments of 8/30/21 add an urgency clause and address chaptering issues.

ANALYSIS:

Existing law:

- 1) Affirms that the people have the right of access to information concerning the conduct of the people's business, and, therefore, the meetings of public bodies and the writings of public officials and agencies shall be open to public scrutiny. (Cal. Const., art. I, § 3(b)(1).)
- 2) Establishes the Gloria Romero Act, which requires a legislative body of a student body organization within the California State University system to conduct its business in open public meeting, except as provided by the Act, and establishes requirements and procedures for such meetings. (Ed. Code, tit. 3, div. 8, pt. 55, ch. 3, art. 1.5, §§ 89305 et seq.)
- 3) Authorizes bodies subject to the Gloria Romero Act to provide a teleconferencing option—which may be via audio or audiovisual means—for its meetings for the benefit of the public, subject to the following relevant requirements:
 - a) A majority of the membership of the legislative body must be at one meeting location.
 - b) The legislative body must post agendas at all teleconference locations.
 - c) Each teleconference location must be identified in the notice and agenda of the meeting or proceeding.
 - d) Each teleconference location must be accessible to the public.
 - e) The agenda must provide an opportunity for members of the public to address the legislative body at each teleconference location. (Ed. Code, § 89305(b)(1) & (2), (c).)

- 4) Establishes the Bagley-Keene Act, which requires state bodies to conduct their business in open public meetings, except as provided by the Act, and establishes requirements and procedures for such meetings. (Gov. Code, tit. 2, div. 3, art. 9, §§ 11120 et seq.)
 - a) “State bodies” covered by the Bagley-Keene Act include every state board, commission or body created by statute or required by law to conduct official meetings, every commission created by executive order, any board or body exercising the authority of a state body by delegation, any advisory body created by formal action of a state body, any body supported by public funds and which a member of a state body serves in their official capacity, and the State Bar of California. (Gov. Code, § 11121.)
 - b) “State bodies” do not include specified legislative agencies (except the State Bar of California), agencies subject to the Brown Act, and certain educational and health-related agencies. (Gov. Code, § 11121.1.)
- 5) Authorizes state bodies subject to the Bagley-Keene Act to provide a teleconferencing option—which may be via audio or audiovisual means—for its meetings for the benefit of the public, subject to the following relevant requirements:
 - a) The meeting must be audible to the public at the location specified in the notice of the meeting.
 - b) The legislative body must post agendas at all teleconference locations.
 - c) Each teleconference location must be identified in the notice and agenda of the meeting or proceeding.
 - d) Each teleconference location must be accessible to the public.
 - e) The agenda must provide an opportunity for members of the public to address the legislative body at each teleconference location.
 - f) All votes must be taken via rollcall.
 - g) At least one member of the state body must be physically present at the location specified in the notice of the meeting. (Gov. Code, § 11123.)
- 6) Establishes the Brown Act, which secures public access to the meetings of public commissions, boards, councils, and agencies in the state. (Gov. Code,

tit. 5, div. 2, pt. 1, ch. 9, §§ 54950 et seq.) The Brown Act defines the following relevant terms:

- a) A “local agency” is a county, city, whether general law or chartered, city and county, town, school district, municipal corporation, district, political subdivision, or any board, commission, or agency thereof, or any other local public agency. (Gov. Code, § 54951.)
 - b) A “legislative body” is the governing board of a local agency or any other local body created by state or federal statute; a commission, committee, board, or other body of a local agency, as specified; a board, commission, or other multimember body that governs a private corporation, limited liability company, or other entity that is either created by an elected legislative body to exercise delegated authority or receives funds from a local agency and includes a member of the legislative body of the local agency; or the lessee of any hospital leased pursuant to Health and Safety Code section 21131, where the lessee exercises any material authority delegated by the legislative body. (Gov. Code, § 54952.)
- 7) Requires all meetings of the legislative body of a local agency to be open and public, and all persons shall be permitted to attend any meeting of the legislative body of a local agency, except as otherwise provided in the Brown Act. (Gov. Code, § 54953.)
- 8) Authorizes the legislative body of a local agency to use teleconferencing for the benefit of the public and the legislative body of a local agency in connection with any meeting or proceeding authorized by law, provided that the teleconferenced meeting complies with all of the following conditions and all otherwise applicable laws:
- a) Teleconferencing, as authorized, 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 shall be by rollcall. (Gov. Code, § 54953(b)(2).)
 - b) If the legislative body 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 in the public appearing before the legislative body of the local agency. (Gov. Code, § 54953(b)(3).)

- c) Each teleconferencing location shall be identified in the notice and agenda of the meeting or proceeding, and each teleconference location shall be accessible to the public. (Gov. Code, § 54953(b)(3).)
- d) During the teleconference, at least a quorum of the members of the legislative body shall participate from locations within the boundaries of the territory over which the local agency exercised jurisdiction, except as provided in 6). (Gov. Code, § 54953(b)(3).)
- e) The agenda shall provide an opportunity for members of the public to address the legislative body directly, as the Brown Act requires for in-person meetings, at each teleconference location. (Gov. Code, § 54953(b)(3).)
- f) For purposes of these requirements, “teleconference” means a meeting of a legislative body, the members of which are in different locations, connected by electronic means, through either audio or video, or both. (Gov. Code, § 54953(b)(4).)

Existing executive orders:

- 1) Proclaim a State of Emergency to exist in California as a result of the threat of COVID-19. (Governor’s Proclamation of a State of Emergency (Mar. 4, 2020).)
- 2) Provide that, notwithstanding any provision of state or local law, including the Bagley-Keene Act or the Brown Act, a local or state legislative body may, subject to the notice and accessibility requirements set forth in item 4), may hold public meetings via teleconferencing and make public meetings accessible telephonically or otherwise electronically to all members of the public seeking to observe and to address the local legislative body. (Governor’s Exec. Order No. N-25-20 (Mar. 12, 2020); Governor’s Exec. Order No. N-29-20 (Mar. 17, 2020); Governor’s Exec. Order No. N-08-21 (Jun. 11, 2021).)
- 3) Waive the requirements in the Bagley-Keene Act and the Brown Act expressly or impliedly requiring the physical presence of the members, the clerk, or other personnel of the body, or the public, as a condition of participation in, or quorum for, a public meeting, including:
 - a) The requirement that state and local bodies notice each teleconference location from which a member will be participating in a public meeting.

- b) The requirement that each teleconference location be accessible to the public.
 - c) The requirement that members of the public may address the body at each teleconference location.
 - d) The requirement that state and local bodies post agendas at all teleconference locations.
 - e) The requirement that, during teleconference meetings, at least a quorum of the members of the local body participate from locations within the boundaries of the territory over which the local body exercises jurisdiction. (Governor's Exec. Order No. N-25-20 (Mar. 12, 2020); Governor's Exec. Order No. N-29-20 (Mar. 17, 2020); Governor's Exec. Order No. N-08-21 (Jun. 11, 2021).)
- 4) Authorize a state or local legislative body to hold a meeting via teleconference, in which members of the public may observe and address the meeting through telephonic or other electronic means, subject to the below requirements, without having to make available any physical location from which the public may observe the meeting and offer comment:
- a) Implement a procedure for receiving and swiftly resolving requests for reasonable modification or accommodation from individuals with disabilities, consistent with the Americans with Disabilities Act (42 U.S.C. § 12101 et seq.) (ADA) and resolving any doubt whatsoever in favor of accessibility; this procedure must be advertised each time notice is given of the means by which members of the public may observe the meeting and offer public comment, pursuant to the notice requirements below.
 - b) Give advance notice of the time of, and post the agenda for, each public meeting according to the timeframes otherwise prescribed by the Brown Act, and using the means otherwise prescribed by the Brown Act.
 - c) In each instance in which notice of the time of the meeting is otherwise given or the agenda for the meeting is otherwise posted, also give notice of the means by which members of the public may observe the meeting and offer public comment. In any instance where there is a change in such means of public observation and comment, a body may satisfy this requirement by advertising such means using the most rapid means of communication available at the time within the meaning of the Bagley-Keene or Brown Act, which may include posting such means on the body's

website. (Governor's Exec. Order No. N-25-20 (Mar. 12, 2020); Governor's Exec. Order No. N-29-20 (Mar. 17, 2020); Governor's Exec. Order No. N-08-21 (Jun. 11, 2021).)

- 5) Urge state and local bodies to use sound discretion and to make reasonable efforts to adhere as closely as possible to the provisions of the Bagley-Keene Act and the Brown Act, and other applicable local laws regarding the conduct of public meetings, to maximize transparency and provide the public access to their meetings. (Governor's Exec. Order No. N-29-20 (Mar. 17, 2020).)
- 6) Provide that the above provisions will remain in effect until September 30, 2021. (Governor's Exec. Order No. N-08-21 (Jun. 11, 2021).)

This bill:

- 1) Suspends, for meetings subject to the Bagley-Keene Act and/or Gloria Romero Act, the following teleconferencing requirements, subject to compliance with item 2), until January 31, 2022:
 - a) Identifying, in the notice of the meeting, each teleconference location from which a member will be participating.
 - b) Making each teleconference location accessible to the public.
 - c) Allowing members of the public to address the body at each teleconference location.
 - d) Posting agendas at all teleconference locations.
 - e) Requiring at least one member of the body to be physically present at each location.
 - f) Requiring a physical location for the meeting for members of the public to observe the meeting and offer public comment.
- 2) Requires a state or student body holding a teleconferenced meeting under the suspended teleconferencing requirements to do all of the following:
 - a) Allow members of the public to observe and address the meeting telephonically or otherwise electronically, consistent with notice and accessibility requirements.
 - b) Implement a procedure for receiving and swiftly resolving requests for reasonable modification or accommodation from individuals with

disabilities, consistent with the ADA, with all doubts resolved in favor of accessibility.

- c) Advertise the procedure for such requests each time notice is given of the means by which the public may observe the meeting and offer public comment.
 - d) Give advance notice of the time of, and post the agenda for, each public meeting according to the timeframes and means otherwise required by the Bagley-Keene Act or Gloria Romero Act.
 - e) In each instance where the notice of the meeting is given or the agenda is posted, also give notice of the means by which members of the public may observe the meeting and offer public comment. In any instance where there is a change in the means of public observation or comment, or where the required information was not provided prior to the implementation date of the bill, the body may satisfy the requirement by advertising the means of public observation and comment using the most rapid means of communication available at the time, which may include posting the means on the body's website.
 - f) Use sound discretion to make reasonable efforts to adhere as closely as reasonably possible to the otherwise-applicable provisions of the Bagley-Keene act or Gloria Romero Act to maximize transparency and provide the public access to legislative body meetings.
- 3) Includes a sunset provision that will repeal items 1) to 2) on January 31, 2022.
 - 4) Creates statutory exemptions to the Brown Act's teleconferencing requirements during a state or local emergency, as detailed below, until January 1, 2024.
 - 5) Authorizes a local agency to use teleconferencing for a public meeting without complying with the Brown Act's teleconferencing quorum, meeting notice, and agenda requirements set forth in Government Code Section 54953(b)(3), in any of the following circumstances:
 - a) The legislative body holds a meeting during a proclaimed state of emergency, and state or local officials have imposed or recommended measures to promote social distancing.
 - b) The legislative body holds a meeting during a proclaimed state of emergency for purposes of determining, by majority vote, whether as a

result of the emergency, meeting in person would present imminent risks to the health and safety of attendees.

- c) The legislative body holds a meeting during a proclaimed state of emergency and has determined by majority vote pursuant to b) above that, as a result of the emergency, meeting in person would present imminent risks to the health or safety of attendees.
- 6) Provides that a legislative body holding a teleconferenced meeting pursuant to the Brown Act exception provided in 5) is subject to the following requirements:
- a) The legislative body must give notice of the meeting and post agendas as otherwise required by the Brown Act.
 - b) The legislative body must allow members of the public to access the meeting, and the agenda must provide an opportunity for members of the public to address the legislative body directly pursuant to Brown Act requirements. In each instance where notice of the time of the teleconferenced meeting is otherwise given or the agenda for the meeting is otherwise posted, the legislative body must also give notice of the means by which members of the public may access the meeting and offer public comment. The agenda must identify and include an opportunity for all persons to attend via call-in option or an internet-based service option. The legislative body need not provide a physical location from which the public may attend or comment.
 - c) The legislative body must conduct teleconference meetings in a manner that protects the statutory and constitutional rights of the parties and the public appearing before the legislative body.
 - d) In the event of a disruption that prevents the public agency from broadcasting the meeting to members of the public using the call-in or internet-based service options, or in the event of a disruption within the local agency's control that prevents members of the public from offering public comments using the call-in or internet-based service options, the legislative body must take no further action on items appearing on the meeting agenda until public access to the meeting is restored. Actions taken on agenda items during a disruption preventing the broadcast of the meeting may be challenged as provided in the Brown Act.

- e) The legislative body may not require public comments to be submitted in advance of the meeting, and it must provide an opportunity for the public to address the legislative body and offer comment in real time.
 - f) The legislative body may use an online third-party system for individuals to provide public comment that requires an individual to register with the system prior to providing comment.
 - g) If a legislative body provides a timed public comment period, it may not close the comment period or the time to register to provide comment under f) until the timed period has elapsed. If the legislative body does not provide a time-limited comment period, it must allow a reasonable time for the public to comment on each agenda item and to register as necessary under f).
- 7) Provides that if the state of emergency remains active, or state or local officials have imposed measures to promote social distancing, the legislative body must, in order to continue meeting subject to this exemption to the Brown Act, no later than 30 days after it commences using the exemption, and every 30 days thereafter, make the following findings by majority vote:
- a) The legislative body has reconsidered the circumstances of the state of emergency; and
 - b) Either (i) the state of emergency continues to directly impact the ability of the members to meet safely in person; or (ii) state or local officials continue to impose or recommend measures to promote social distancing.
- 8) Defines, for items 4) to 7), “state of emergency” as a state of emergency proclaimed pursuant to Government Code Section 8625.
- 9) Provides that the provisions relating to the Brown Act will remain in effect only until January 1, 2024, and as of that date be repealed.
- 10) Makes findings and declarations relating to this bill’s intent to increase public participation in, and possible limitation of public access to, public meetings during states of emergency as a result of this bill’s telephonic meeting provisions.
- 11) Includes an urgency clause, so this bill will take effect immediately.

Comments

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.

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

SUPPORT: (Verified 9/9/21)

California Special Districts Association (source)
Alameda County Mosquito Abatement District
Association of California Healthcare Districts
Association of California Water Agencies
Association of Environmental Professionals
Cal Voices
California Association of Joint Powers Authorities
California Association of Local Agency Formation Commissions
California Business, Consumer Services and Housing Agency
California Department of Tax and Fee Administration Director Nicholas Maduro
California Downtown Association
California Municipal Utilities Association
California State Association of Counties
California State Association of Electrical Workers
California State University, Office of the Chancellor
California Travel Association

Cameron Estates Community Services District
Cameron Park Community Services District
Cities Agoura, Alameda, Brentwood, Carlsbad, Clayton, Encinitas, Foster City,
Fremont, Hidden Hills, Lafayette, Lawndale, Martinez, Menifee, Norwalk,
Redwood City, Riverside, San Pablo, Soledad, Walnut Creek, and Woodland
Coachella Valley Mosquito and Vector Control District
Contra Costa County Board of Supervisors
Costa Mesa Sanitary District
County of Monterey
County of Santa Clara
Cucamonga Valley Water District
Department of General Services
Disability Rights California
Eastern Municipal Water District
Ebbetts Pass Fire District
Eden Township Healthcare District dba Eden Health District
El Dorado Hills Community Services District
Elsinore Valley Municipal Water District
Fallbrook Regional Health District
Fresno Mosquito and Vector Control District
Gilroy City Councilmember Zach Hilton
Grizzly Flats Community Services District
Honey Lake Valley Resource Conservation District
Humboldt Bay Municipal Water District
Humboldt Community Services District
Jackson Valley Irrigation District
Kayes Community Service District
Kinneloa Irrigation District
Las Virgenes – Malibu Council of Governments
League of California Cities
Los Angeles County Sanitation Districts
Los Angeles Mayor Eric Garcetti
Mammoth Community Water District
Mesa Water District
Metropolitan Water District of Southern California
Mountain Counties Water Resources Association
Mt. View Sanitary District
Murphys Fire Protection District
Napa County Regional Park and Open Space District
North County Fire Protection District

North Tahoe Fire Protection District
Oleventhain Municipal Water District
Orange County Employees Association
Orange County Local Agency Formation Commission
Orange County Water District
Palmdale Water District
Palos Verdes Library District
Reclamation District No. 1000
Rural County Representatives of California
Sacramento Suburban Water District
San Diego County Water Authority
Santa Barbara County Board of Supervisors
Saratoga Fire District
South Coast Air Quality Management District
Southern California Regional Rail Authority
Southern California Water Coalition
Stege Sanitary District
Tahoe Resource Conservation District
Templeton Community Services District
Three Valleys Municipal Water District
Town of Discovery Bay
Truckee Fire Protection District
Urban Counties of California
Valley-Wide Recreation and Park District
Vista Fire Protection District
Vista Irrigation District
Water Replenishment District of Southern California
Western Municipal Water District
Yolanda Richardson, Secretary, California Government Operations Agency

OPPOSITION: (Verified 9/9/21)

ACLU California Action
ACT for Women and Girls
California Environmental Justice Alliance
Californians Aware
First Amendment Coalition
Howard Jarvis Taxpayers association
Together We Will/Indivisible – Los Gatos

ARGUMENTS IN SUPPORT: According to a coalition of supporters, including bill sponsor California Special Districts Association:

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 recommended 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: According to a coalition of the bill’s opponents:

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.

ASSEMBLY FLOOR: 62-4, 5/17/21

AYES: 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

NOES: Bigelow, Megan Dahle, Davies, Nguyen

NO VOTE RECORDED: Calderon, Chen, Flora, Fong, Gabriel, Gray, Kalra,
Mayes, Patterson, Smith, Valladares, Wood

Prepared by: Allison Meredith / JUD. / (916) 651-4113
9/9/21 20:31:02

**** **END** ****