

## AB 361 Changes to the Ralph M. Brown Act Open Meeting Laws

On September 16, 2021, California Gov. Gavin Newsom signed California Assembly Bill 361 (AB 361) into law, as an urgency bill effective immediately. AB 361 permits legislative bodies of state and local entities, such as public retirement boards, to continue to meet virtually and remotely through telephonic and internet means (i.e., via teleconference), during a proclaimed state of emergency, without having to meet the quorum, posting, access and other requirements of traditional teleconference meetings under the Ralph M. Brown Act, Gov't Code sections 54950–54963 (Brown Act) open meeting laws. Legislative bodies may continue to meet virtually pursuant to AB 361 until the end of the current state of emergency and during any future state of emergency, up until January 1, 2024.

On September 30, 2021, the Governor's Executive Order No. N-29-20, that suspended and modified the Brown Act's teleconferencing requirements during the COVID-19 pandemic, is set to expire. This client alert explains the requirements and procedures that local legislative bodies must adopt if they elect to continue to meet virtually after the expiration of Executive Order No. N-29-20.

## **AB 361 summarized**

AB 361 amended the Brown Act's teleconference rules and added new provisions for abbreviated teleconferencing procedures that deviate from the traditional teleconferencing procedures during a proclaimed state of emergency and subject to certain requirements specified in the statute.

AB 361 amended the Brown Act to add subdivision (e) to Gov't Code section 54953. This subdivision describes the circumstances and procedures for adopting abbreviated teleconferencing procedures during a proclaimed state of emergency, such as the current continuing COVID-19 pandemic. Subdivision (e)(1) of the statute provides the circumstances and requirements under which a local legislative body may adopt the abbreviated teleconferencing procedures. Once a local legislative body meets the requirements for adopting teleconferencing procedures, subdivision (e)(2) provides the requirements for the abbreviated teleconferencing procedures that the local legislative body must implement.

### **Adopting AB 361's abbreviated teleconferencing**

A local legislative body, such as a city or county retirement board and its standing committees, may elect to use AB 361's abbreviated teleconferencing procedures where a state of emergency has been formally proclaimed, and IF:

- State or local officials have imposed or recommended measures to promote social distancing at the time the legislative body holds the meeting (Gov't Code section 54953(e)(1)(A); or

- The legislative body holds a meeting for the first time for the purpose of determining by majority vote whether, as a result of proclaimed state of emergency, meeting in person would present imminent risks to the health and safety of attendees (Gov't Code section 54953(e)(1)(B)), or
- The legislative body has determined (per previous bullet) that, as a result of the proclaimed state of emergency, meeting in person would continue to present imminent risks to the health or safety of attendees (Gov't Code section 54953(e)(1)(C)).

AB 361 further imposes on local legislative bodies a duty to make factual findings to justify its election to continue to use the law's abbreviated teleconferencing procedures. (Gov't Code section 54953(e)(3). Local legislative bodies who wish to consider using AB 361's abbreviated teleconferencing procedures must make the following factual findings within 30 days after teleconferencing for the first time after the expiration of Executive Order No. N-29-20 on Sept. 30, and every 30 days thereafter:

- The legislative body has reconsidered the circumstances of the state of emergency.
- Either of the following circumstances exist:
  - The state of emergency continues to directly impact the ability of the members to meet safely in person.
  - State or local officials continue to impose or recommend measures to promote social distancing.
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Until Jan. 1, 2024, public retirement boards must reconsider these circumstances stated above and make factual findings by majority

vote on whether they continue to exist in order for the local legislative body to elect and continue to use AB 361's abbreviated teleconferencing procedures. (Note that AB 361 was designed not only to deal with COVID-19 but also to other types of states of emergency, as defined in Gov't Code section 8625 of the California Emergency State Services Act.)