

Date of Hearing: May 4, 2022

ASSEMBLY COMMITTEE ON LOCAL GOVERNMENT

Cecilia Aguiar-Curry, Chair

AB 1944 (Lee) – As Amended April 18, 2022

SUBJECT: Local government: open and public meetings.

SUMMARY: Allows members of a legislative body of a local agency to use teleconferencing without identifying each teleconference location in the notice and agenda of the meeting or proceeding, and without making each teleconference location accessible to the public.

Specifically, **this bill:**

- 1) Provides that, if a member of a legislative body elects to teleconference from a location that is not a public place, the legislative body shall be exempt from identifying the address of the location in the notice and agenda and from having the location be accessible to the public in both of the following circumstances:
 - a) The legislative body holds its first teleconferenced meeting after passage of this bill, for the purpose of determining, by a majority vote, whether members will not be required to identify the address of any private location from which the member elects to teleconference. This determination remains applicable to the legislative body until such time as the legislative body votes otherwise.
 - b) The legislative body holds a meeting and has previously determined, by majority vote, that members will not be required to identify the address of any private location from which the member elects to teleconference.
- 2) Provides that, if a legislative body elects to use teleconferencing as authorized by this bill, it shall provide both of the following:
 - a) A video stream accessible to members of the public.
 - b) An option for members of the public to address the body remotely during the public comment period through an audio-visual or call-in option.
- 3) Requires, if the legislative body of a local agency elects to use teleconferencing, the agenda to identify any member of the legislative body that will participate in the meeting remotely. If a member of the legislative body elects to participate in the meeting remotely after the agenda is posted, an updated agenda shall be posted. In the time between the start of the meeting and 72 hours before a regular meeting, as specified, and 24 hours before a special meeting, as specified, a legislative body shall only update the agenda to reflect the members participating in the meeting remotely.
- 4) Defines, for the purposes of this bill, “video stream” to mean a medium 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) Finds and declares that Sections 1, 2, and 3 of this bill, which amend, repeal, and add Section 54953 of the Government Code, further, within the meaning of paragraph (7) of subdivision (b) of Section 3 of Article I of the California Constitution, the purposes of that constitutional section as it relates to the right of public access to the meetings of local public bodies or the writings of local public officials and local agencies. Pursuant to paragraph (7) of subdivision (b) of Section 3 of Article I of the California Constitution, the Legislature makes the following findings:

This act is necessary to ensure minimum standards for public participation allowing for greater public participation in teleconference meetings.

- 6) Finds and declares that during the COVID-19 public health emergency, certain requirements of the Ralph M. Brown Act (Brown Act) and the Bagley-Keene Open Meeting Act (Bagley-Keene Act) were suspended by Executive Order No. N-29-20. Audio and video teleconference were widely used to conduct public meetings in lieu of physical location meetings, and public meetings conducted by teleconference during the COVID-19 public health emergency have been productive, have increased public participation by all members of the public regardless of their location in the state and ability to travel to physical meeting locations, have protected the health and safety of civil servants and the public, and have reduced travel costs incurred by members of state bodies and reduced work hours spent traveling to and from meetings.
- 7) Finds and declares that Sections 1, 2, and 3 of this act, which amend, repeal, and add Section 54953 of the Government Code, impose a potential limitation on the public's right of access to the meetings of public bodies or the writings of public officials and agencies within the meaning of Section 3 of Article I of the California Constitution. Pursuant to that constitutional provision, the Legislature makes the following findings to demonstrate the interest protected by this potential limitation and the need for protecting that interest:

By removing the requirement for each teleconference location to be identified in the notice and agenda, including the member's private home address, and by providing exceptions to the requirements that each teleconference location must be accessible to the public and that members of the public be given the opportunity to address the legislative body directly at each teleconference location, this act protects the personal, private information and location of public officials and their families while preserving the public's right to access information concerning the conduct of the people's business.

- 8) Provides a sunset date of January 1, 2030.

FISCAL EFFECT: None

COMMENTS:

- 1) **Background.** The Brown Act was 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 remains 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 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 defines “local agency” to mean 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 other local public agency.

The Brown Act defines “legislative body” to mean:

- a) The governing body of a local agency or any other local body created by state or federal statute.
- b) A commission, committee, board, or other body of a local agency, whether permanent or temporary, decision-making or advisory, created by charter, ordinance, resolution, or formal action of a legislative body. Advisory committees composed solely of the members of the legislative body that are less than a quorum of the legislative body are not legislative bodies. Standing committees of a legislative body, irrespective of their composition, that have a continuing subject matter jurisdiction or a meeting schedule fixed by charter, ordinance, resolution, or formal action of a legislative body are legislative bodies.
- c) A board, commission, committee, or other multimember body that governs a private corporation, limited liability company, or other entity that either:
 - i) Is created by the elected legislative body in order to exercise authority that may lawfully be delegated by the elected governing body to a private corporation, limited liability company, or other entity.
 - ii) Receives funds from a local agency and the membership of whose governing body includes a member of the legislative body of the local agency appointed to that governing body as a full voting member by the legislative body of the local agency.

The Brown Act defines a “meeting” as “any congregation of a majority of the member 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.”

The Brown Act specifies that a member of the public shall not be required, as a condition of attending a meeting, to register a name, provide other information, complete a questionnaire, or otherwise fulfill any condition precedent to attendance. If an attendance list, register,

questionnaire, or other similar document is posted at or near the entrance to the room where the meeting is to be held, or is circulated during the meeting, it must state clearly that signing, registering, or completing the document is voluntary, and that all persons may attend the meeting regardless of whether a person signs, registers, or completes the document.

The Brown Act allows a district attorney or any interested person to seek a judicial determination that an action taken by a local agency's legislative body violates specified provisions of the Brown Act – including the provisions governing open meeting requirements, teleconferencing, and agendas – and is therefore null and void.

- 2) **Teleconferencing and the Brown Act.** The Brown Act first allowed meetings to be conducted via video teleconference in 1988. At the time, San Diego County was considering the use of video teleconferencing for meetings and hearings of the board of supervisors due to concerns about the long distances that some of their constituents were having to travel to participate in board meetings. They were especially concerned that these distances were so great that they prohibited some people from attending meetings at all. AB 3191 (Frazee), Chapter 399, Statutes of 1988, responded to these concerns by authorizing the legislative body of a local agency to use video teleconferencing. Since that time, a number of bills have made modifications to this original authorization.
- 3) **Teleconferencing Rules Prior to the COVID Pandemic and 2021 Legislation.** The Brown Act generally 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 roll call.

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.

“Teleconference” is defined as 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.

Teleconferencing has never been required. It has always been permissive.

- 4) **Agendas.** The Brown Act requires local agencies to post, at least 72 hours before a regular meeting, an agenda containing a brief general description of each item of business to be transacted or discussed at the meeting, including items to be discussed in closed session. The agenda must specify the time and location of the regular meeting and must be posted in a location that is freely accessible to members of the public and on the local agency website, if the local agency has one. No action or discussion may be undertaken on any item not appearing on the posted agenda, with specified exceptions.

If requested, the agenda must be made available in appropriate alternative formats to persons with a disability, as required by Section 202 of the Americans with Disabilities Act of 1990 (ADA), and the federal rules and regulations adopted to implement the ADA. The agenda must include information regarding how, to whom, and when a request for disability-related modification or accommodation, including auxiliary aids or services, may be made by a person with a disability who requires a modification or accommodation in order to participate in the public meeting.

- 5) **Comment Periods.** The Brown Act generally requires every agenda for regular meetings to provide an opportunity for members of the public to directly address the legislative body on any item of interest to the public, before or during the legislative body's consideration of the item, that is within the subject matter jurisdiction of the legislative body. The legislative body of a local agency may adopt reasonable regulations to ensure that this intent is carried out, including, but not limited to, regulations limiting the total amount of time allocated for public testimony on particular issues and for each individual speaker.
- 6) **Executive Order N-29-20.** 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."

- 7) **AB 361.** Despite the executive order, both local and state governing bodies were concerned about their ongoing ability to teleconference without having to disclose the location of teleconferencing members or make that location accessible to the public. In response, the Legislature passed and the Governor signed AB 361 (Robert Rivas) Chapter 165, Statutes of 2021. In addition to provisions affecting state governing bodies, AB 361 allowed exemptions to the Brown Act's teleconferencing requirements during a state or local emergency.

Specifically, AB 361 authorized a local agency to use teleconferencing for a public meeting without complying with the Brown Act's teleconferencing quorum, meeting notice, and agenda requirements 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.

A local agency availing itself of the provisions of AB 361 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).

If a state of emergency remains active, or state or local officials have imposed measures to promote social distancing, the legislative body must make findings in order to continue using the exemptions provided by AB 361. The following findings must be made no later than 30 days after a legislative body begins using the exemption, and every 30 days thereafter, by majority vote:

- a) The legislative body has reconsidered the circumstances of the state of emergency.
- b) The state of emergency continues to directly impact the ability of the governing body members to meet safely in person, or state or local officials continue to impose or recommend measures to promote social distancing.

As an urgency measure, AB 361 went into effect on September 16, 2021. It remains in effect until January 1, 2024.

- 8) **Author's Statement.** According to the author, "Given the last few years of the COVID-19 pandemic, many members of Brown Act bodies have participated remotely in official business, and have shown effective leadership while keeping themselves and their families healthy and safe. However, even with existing legislation, the protections are only in place during a declared state of emergency. Since there are many members of Brown Act bodies who have families that may be immunocompromised or may need to teleconference from a private location, there are still many concerns with existing legislation.

"For example, if outside of the pandemic a local elected is teleconferencing from a hospital room after giving birth, they would be forced to either reveal the location they are teleconferencing from or make the room publicly available, or they would not be able to attend the meeting and partake in their official duties. AB 1944 would ensure that:

- Brown Act bodies can vote to allow their members to teleconference into a meeting without having to reveal private addresses or make private addresses accessible to the public, to continue performing their official duties.
- Livestreams of meetings are required whenever members teleconference into meetings so the public has access to observe and participate in meetings.
- Members of the public can address their elected officials either through a call-in or video option, ensuring that they are able to participate in government."

- 9) **Bill Summary.** This bill allows members of a legislative body of a local agency to use teleconferencing without identifying each teleconference location in the notice and agenda of the meeting or proceeding, and without making each teleconference location accessible to the public.

In order to use these exemptions, the legislative body must hold its first teleconferenced meeting after this bill becomes effective to determine, by a majority vote, whether members will not be required to identify the address of any private location from which the member elects to teleconference. This determination remains applicable to the legislative body until such time as the legislative body votes otherwise.

If a legislative body elects to teleconference as authorized by this bill, it must:

- a) Provide a video stream accessible to members of the public, and an option for members of the public to address the body remotely during the public comment period through an audio-visual or call-in option.
- b) Identify on the agenda any member of the legislative body that will participate in the meeting remotely. If a member of the legislative body elects to participate in the meeting remotely after the agenda is posted, an updated agenda must be posted. In the time between the start of the meeting and 72 hours before a regular meeting or and 24 hours before a special meeting, a legislative body must only update the agenda to reflect the members participating in the meeting remotely.

This bill contains a sunset date of January 1, 2030. This bill is sponsored by the author.

- 10) **Related Legislation.** AB 2449 (Rubio) allows a local agency to use teleconferencing without identifying each teleconference location in the notice and agenda of the meeting or proceeding, and without making each teleconference location accessible to the public under specified parameters, including that at least a quorum of the members of the legislative body participates in person from a singular location clearly identified on the agenda that is open to the public and within the boundaries of the local agency. AB 2449 is pending in this Committee.

SB 1100 (Cortese) authorizes the presiding member of a legislative body conducting a meeting to remove an individual for disrupting the meeting, and defines “disrupting” for these purposes. SB 1100 is pending on the Senate Floor.

- 11) **Previous Legislation.** AB 339 (Lee) of 2021 would have required, until December 31, 2023, city councils and boards of supervisors in jurisdictions over 250,000 residents provide both in-person and teleconference options for the public to attend their meetings. This bill was vetoed with the following message:

“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.”

AB 361 (Robert Rivas) Chapter 165, Statutes of 2021, 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.

AB 703 (Rubio) of 2021 would have required only a quorum of the members of a local legislative body to participate from a singular location clearly identified on an agenda, open to the public, and situated within the boundaries of the local agency. AB 703 was held in this Committee.

- 12) **Arguments in Support.** A coalition including the Urban Counties of California, the Rural County Representatives of California, the California State Association of Counties, the Association of California Healthcare Districts, the Association of California School Administrators, the California Association of Public Authorities for IHSS, and the League of California Cities, in support, write, “AB 1944 represents an important modernization to the Brown Act that protects local elected officials’ location when participating from a non-public, remote location, while improving access to members of the public via a teleconferencing option.

“As you know, local agencies subject to the Brown Act were able to utilize remote participation for elected officials and for the public during the COVID-19 public health crisis. Generally, those processes worked well, allowing for local agencies to continue to conduct the public’s business in a safe manner. In fact, many of our local agencies report increased participation and interaction with members of the public who would otherwise have been unable to access such meetings as a result. At the same time, the ability for local elected officials to participate remotely without having to share the address of their whereabouts allowed them to do so without risking their own well-being and that of their families and neighbors.

“While authority to maintain remote participation continues after the approval of last year’s AB 361 (R. Rivas), based on public health recommendations at the time, this authorization of remote participation by local elected officials, as well as members of the public, is slated to sunset at the end of 2023. Developing a long-term framework for remote participation is a critical update of the Brown Act. We have learned during the pandemic that such participation is effective, transparent, and actually encourages participation from a broader component of the public than was anticipated.

“These positive effects on the conduct of the public’s business would suggest that the conditions outlined in AB 1944 are both reasonable and appropriate to incorporate into our post-pandemic practice of delivering open and public meetings.”

- 13) **Arguments in Opposition.** A coalition including the California News Publisher’s Association, the American Civil Liberties Union, the First Amendment Coalition, the Howard Jarvis Taxpayers Association, Californians Aware, the Leadership Counsel for Justice and Accountability, the Society for Professional Journalists Los Angeles, the Orange County Press Club, and the National Writers Union of Southern California, in opposition, writes, “...we must respectfully oppose AB 1944 (Lee), which would make a fundamental change to the Brown Act, enshrining government officials’ ability to teleconference from private locations not identified or accessible to the public. While temporary accommodations may be necessary, such as to address public health needs during the COVID-19 pandemic, this bill would abolish longstanding democratic protections that require public meetings be held in public venues where government officials can be seen and engaged by the public.

“Further, this bill would change the Brown Act’s requirement that a quorum be present during a teleconference, allowing government bodies to vote to allow themselves to teleconference from outside the jurisdiction, indefinitely and without justification. While this bill includes some provisions that may expand access for members of the public who wish to participate, the cost to democratic principles and public protection is too great...

“AB 1944 as written, would allow a body to vote to govern themselves with a teleconference scheme that does not require members to identify the location from which they are taking the meeting, nor make that location accessible to the public. Without disclosing the locations they are participating from there is no mechanism to ensure that a quorum of members, or any members, are within the jurisdiction about which they are making decisions.

“While we appreciate the need for narrow exceptions that currently exist under the Brown Act, such as for health and public safety, and specific accommodations for individual members for privacy or health concerns, we do not believe that eliminating critical public meeting requirements is in line with the letter or spirit of the law. Unless there are precisely defined circumstances when a member of a legislative body needs to participate from a private location, the value of public transparency about where members are participating from, and being able to address them directly, should not be sacrificed...

“We can agree with the proponents that certain members of government bodies should not have to disclose their home address or open up their homes to the public. But the problem is not the disclosure requirements – it is the faulty presumption that public officials’ private homes or offices are appropriate places from which to join a public meeting. When the state labored under stay-at-home orders during the pandemic, participation from home was essential. There was no other option. That is no longer the case, and has not been for quite some time now. The public’s right of meaningful access, consistent with the California Constitution, should not be compromised based on the faulty premise that public officials should be attending public meetings from their private homes as the standard ongoing practice.”

REGISTERED SUPPORT / OPPOSITION:**Support**

Association of Bay Area Governments (if amended)
Association of California Healthcare Districts
Association of California School Administrators
Bay Area Air Quality Management District
California Association of Councils of Governments
California Association of Joint Powers Authorities
California Association of Public Authorities for IHSS
California Charter Schools Association
California School Boards Association
California State Association of Counties
Cities Association of Santa Clara County
City of Berkeley
City of Cupertino
City of Lafayette
City of Mountain View
City of Rancho Palos Verdes
City of Redwood City
City of San Jose
City of Santa Clara
Council Member Zach Hilton, City of Gilroy
County of Mendocino
County of Monterey
County of Santa Cruz
County of Solano
County of Tulare
Disability Rights California
Encina Wastewater Authority
First 5 Solano Children and Families Commission
Housing Contractors of California
Indivisible CA-37
Indivisible Sacramento
Indivisible San Francisco
Indivisible San Jose
League of California Cities
Los Angeles Unified School District
Metropolitan Transportation Commission (if amended)
Peninsula Clean Energy
Public Risk Innovation, Solutions, and Management
Rural County Representatives of California
Sacramento Area Council of Governments
San Francisco Bay Area Rapid Transit District
San Gabriel Valley Council of Governments
San Mateo County Transit District
San Mateo County Transportation Authority
Santa Clara Valley Open Space Authority

Silicon Valley Clean Energy
Silicon Valley Community Foundation
Sonoma Clean Power
Stanislaus Council of Governments
State Association of County Retirement Systems
Town of Hillsborough
Town of Los Gatos
Transportation Agency for Monterey County
Transportation Authority of Marin
Upper San Gabriel Valley Municipal Water District
Urban Counties of California

Opposition

ACLU California Action
California News Publishers Association
Californians Aware
First Amendment Coalition
Howard Jarvis Taxpayers Association
Leadership Counsel for Justice & Accountability
Orange County Press Club
Public Advocates
Society of Professional Journalists, Greater Los Angeles Chapter

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