

Date of Hearing: May 4, 2022

ASSEMBLY COMMITTEE ON LOCAL GOVERNMENT

Cecilia Aguiar-Curry, Chair

AB 2647 (Levine) – As Amended April 19, 2022

**SUBJECT:** Local government: open meetings.

**SUMMARY:** Allows writings that have been distributed to members of a legislative body of a local agency less than 72 hours before an open meeting to be posted online to satisfy specified requirements of the Ralph M. Brown Act (Brown Act). Specifically, **this bill:**

- 1) Recasts existing law that requires a local agency, when a writing that is a public record related to an agenda item for an open session of a regular meeting of a legislative body of a local agency (writing) is distributed to all, or a majority of all, of the members of a legislative body of a local agency by a person in connection with a matter subject to discussion or consideration at an open meeting of the body less than 72 hours before that meeting to do both of the following:
  - a) The local agency shall make any writing available for public inspection at the time the writing is distributed to the members of the legislative body at a public office or location that the agency designates for this purpose.
  - b) The local agency shall list the address of the designated location on the agendas for all meetings of the legislative body of that agency.
- 2) Exempts local agencies from the requirements described in 1), above, if the following requirements are met:
  - a) The local agency immediately posts any writing on the local agency's internet website in a position and manner that makes it clear that the writing relates to an agenda for an upcoming meeting.
  - b) The local agency lists the web address of the local agency's internet website on the agendas for all meetings of the legislative body of that agency.
  - c) The local agency makes physical copies available for public inspection, beginning the next regular business hours for the local agency, at a public office or location that the agency shall designate for this purpose.
- 3) Makes other technical and conforming changes.
- 4) Finds and declares that Section 1 of this bill furthers, 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, and declares, pursuant to paragraph (7) of subdivision (b) of Section 3 of Article I of the California Constitution, that the Legislature makes the following findings:

Because this act would authorize local agencies to make public documents available by posting the public documents on the local agency's internet website, thus making the public documents available by local agencies more quickly and cost effectively, this act furthers the purpose of Section 3 of Article I of the California Constitution.

**EXISTING LAW:**

- 1) Declares that agendas of public meetings are disclosable public records under the California Public Records Act and shall be made available upon request.
- 2) States that if a writing is a public record related to an agenda item for an open session of a regular meeting of a legislative body of a local agency and is distributed to all, or a majority of all, of the members of a legislative body of a local agency by a person in connection with a matter subject to discussion or consideration at an open meeting of the body less than 72 hours before that meeting, the writing shall be made available for public inspection at the time the writing is distributed to all, or a majority of all, of the members of the body.
- 3) Specifies that any writing described in 2), above, shall be made available for public inspection at a public office or location designated by the local agency. The local agency may also post the writing on its website.

**FISCAL EFFECT:** None.

**COMMENTS:**

- 1) **Bill Summary.** This bill alters the procedure that local agencies must follow when materials related to an agenda item for an open, regular meeting of a legislative body are distributed to all, or a majority, of the members of a legislative body less than 72 hours before the meeting.

This bill retains and recasts existing law requiring such materials to be made available at the time the writing is distributed to the members of the legislative body at a public office or location that the agency designates for this purpose. The local agency must list the address of the designated location on the agendas for all meetings of the legislative body of that agency.

This bill, however, provides an exemption from these requirements if the local agency does the following:

- a) Immediately posts the writing on the local agency's internet website in a position and manner that makes it clear that the writing relates to an agenda for an upcoming meeting.
- b) Lists the web address of the local agency's internet website on the agendas for all meetings of the legislative body of that agency.
- c) Makes physical copies available for public inspection, beginning the next regular business hours for the local agency, at a public office or location that the agency designates for this purpose.

This bill is sponsored by the League of California Cities.

- 2) **Author’s Statement.** According to the author, “The Brown Act remains an important tool in guaranteeing the public’s access to open and accessible meetings. Under the requirements of the Brown Act, any writings or documents that have been distributed to a majority of a local legislative body less than 72 hours before a meeting must also be distributed to the public at the same time. To meet these requirements, some local governments have posted meeting documents and materials online to comply with the Brown Act. However, a recent court ruling found that posting meeting documents online does not meet the requirements of the Brown Act.

“This decision has great potential to impair the conduct of the People’s business and could cause local agencies to keep offices open after hours or on weekends, at a great cost to the public, or withhold late-breaking information until an office is open, causing delays and insufficient time for proper analysis. AB 2647 will make clear that any writings that have been distributed to a majority of a local legislative body less than 72 hours before a meeting can be posted online to satisfy the requirements of the Brown Act, while also requiring that the documents be made available in-person the next time an office is open. This bill is an important tool to ensure that local governments are transparent and that the public can receive important information without delay.”

- 3) **Ralph M. Brown Act.** 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 provides that any person may request that a copy of the agenda, or a copy of all the documents constituting the agenda packet, of any meeting of a legislative body be mailed to that person.

- 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) **SB 343.** SB 343 (Negrete McLeod), Chapter 298, Statutes of 2007, required any writing related to an agenda item for an open session of a regular meeting that is distributed to all, or a majority, of the members of the legislative body less than 72 hours before the meeting to be made available for public inspection at the time it is distributed to the members of the body. The bill specifically required a local agency to make any such writing available for public inspection at a public office or location that the agency designates for this purpose. It also required the local agency to list the address of the office or location on the agendas for all meetings of the legislative body of that agency. Additionally, SB 343 bill authorized the local agency to *also* post the writing on the local agency's internet website in a position and manner that makes it clear that the writing relates to an agenda for an upcoming meeting.
- 6) **Sierra Watch v. Placer County.** This bill is contextualized by a case in the Third Appellate Court of Appeals between Sierra Watch and Placer County (County). In 2011, Squaw Valley Real Estate LLC proposed a project titled the Village at Squaw Valley Specific Plan, which involves a proposed development on about 94 acres in Olympic Valley. Afterwards, the County began and completed a draft Environmental Impact Report (EIR) for the project to comply with the California Environmental Quality Act, which it released in 2015. Several parties expressed concern over the EIR, including Sierra Watch and the Attorney General.

After the agenda for the board of supervisors' meeting was posted, the County agreed to meet some of the Attorney General's concerns. After this agreement was met, the County counsel, at 5:36 pm, e-mailed the County clerk the updated development agreement and a memorandum explaining the change and providing other information about the project. Upon receipt of the email, the County clerk placed copies of the agreement and memorandum in the County clerk's office, which is open to the public between 8:00 am and 5:00 pm. At 5:42 pm, the County clerk emailed the two documents to all Board members. The Board held its meeting the next day, which Sierra Watch attended, placing the updated documents and memorandum on a public table. Following some discussion, the Board approved the project.

Sierra Watch afterward challenged the County's approval in two lawsuits. In one of these suits, Sierra Watch alleged that the County approved the project in violation of the Brown Act. Under section 54957.5 of the Brown Act, pursuant to SB 343, in the event a county distributes to its board of supervisors any writing pertinent to an upcoming board meeting less than 72 hours before that meeting, the county must make that writing 'available for

public inspection' at a county office 'at the time the writing is distributed' to the board. The court found that Placer County did violate this requirement, as the County placed the writing in a County office at a time in which the office was closed to the public and therefore not at the same time that it was available to the Board's members.

The court ultimately found that the County's conduct violated the Brown Act:

“This appeal concerns Sierra Watch’s Brown Act allegations and involves two of the act’s requirements. Its first claim concerns section 54957.5 of the Brown Act. Under that statute, in the event a county distributes to its board of supervisors any writing pertinent to an upcoming board meeting less than 72 hours before that meeting, the county must make that writing ‘available for public inspection’ at a county office ‘at the time the writing is distributed’ to the board. (Id., subd. (b).) We consider here two competing interpretations of this statute. To satisfy section 54957.5’s requirements, must the writing simply be placed in a county office that allows for public inspection of documents ‘at the time the writing is distributed’ to the board, or must the writing be placed in this office and actually available for public inspection ‘at the time’ of distribution? Considering the statute’s plain language and purpose, we find the latter is true. In most instances, the distinction between the two interpretations is irrelevant, as a writing is generally available for public inspection at the moment it is placed in a location allowing for public inspection. But that is not true when, as in this case, the county places the writing in a county office at a time the office is closed to the public—for example, on a weekend. In that event, the writing is not actually available for public inspection until the office reopens to the public, and so is not available at the time required under section 54957.7”

- 7) **Policy Consideration.** This bill would allow for public writings related to an agenda item released less than 72 hours before a meeting to be released to the public in a solely online format. The local agency must still make physical copies available for public inspection, beginning the next regular business hours for the local agency, at a public office or location that the agency shall designate for this purpose.

While internet access has expanded widely in recent years, broadband is still far from universal. As measured by the Federal Communications Commission, 30 of California’s 58 counties have broadband access available to at least 94% of their residents. However, an analysis by USA Today found that, in 30 of the 58 counties, no more than 46% of households actually have high-speed access. There is a substantial gap in internet access that also varies widely between income levels and counties.

Under this bill, if materials related to an agenda item were released to the members of the legislative body of a local agency and on the internet during non-work hours, such as a Saturday or weekday evening for a meeting at 9:00 am on the next business day, those with internet access would be provided those materials “at the same time” as the members of the legislative body. However, those without internet access would not. This would place people without internet access at a disadvantage from everyone else. While they would be able to access the materials in a physical location “at the next business hours” of the local agency, they would not have as much time to review those materials as the members of the governing body and the members of the public who do have internet access.

Considering that many Californians lack access to consistent internet services, the author may wish to consider the potentially disproportionate impact of online-only agenda items on communities that may not be able to access them. Additionally, the author may wish to consider the intent of the Brown Act, which expressly states the importance of public access to meetings. As stated above, the Brown Act's intent is to ensure that "the people of this State do not yield their sovereignty to the agencies which serve them... The people insist on remaining informed so that they may retain control over the instruments they have created." If the digital divide in California prevents close to half of households from high speed internet access, if they have access at all, online-only agenda materials may not provide sufficient public access to agenda-related writings.

- 8) **Previous Legislation.** SB 274 (Wieckowski) Chapter 763, Statutes of 2021 requires local agencies to provide local agency meeting materials by email to persons who request it, if technologically feasible.
- 9) **Arguments in Support.** The League of California Cities, sponsor of this bill, writes in support, "Recently the Third District Court of Appeals held that posting meeting documents online does not satisfy this requirement of the Brown Act, and that local governments must place physical copies of the document in a designated office open to the public. Requiring physical access at a public location as the only way to satisfy the Brown Act could impair the conduct of the people's business. Without a legislative solution, the Court's decision requires local agencies to keep an office open to the public during evenings and/or weekends when a writing is distributed to a local agency's legislative body. Alternatively, the local agency would have to withhold late breaking information from the legislative body until an office is open which could impact the ability of a legislative body to be best informed with less time to consider additional information."

"This measure would clarify that writings distributed to the majority of a local legislative body less than 72 hours before a meeting can be posted online if physical copies are made available for public inspection at the beginning of the next regular business hours at a public office or designated location. By reducing delays, the public and the community will be better informed to engage in the meeting with the flexibility and transparency this measure provides. This change would advance meaningful public access to government information."

- 10) **Arguments in Opposition.** None on file.

#### **REGISTERED SUPPORT / OPPOSITION:**

##### **Support**

League of California Cities [SPONSOR]  
 Association of California Healthcare Districts  
 Association of California Water Agencies  
 California Association of Joint Powers Authorities  
 California Association of Public Authorities for IHSS  
 California Charter Schools Association  
 California School Boards Association  
 California Special Districts Association

California State Association of Counties  
Desert Water Agency  
El Dorado Irrigation District  
Los Angeles Unified School District  
Marin County Council of Mayors and Council Members  
North Orange County Community College District  
Palmdale Water District  
Rowland Water District  
Rural County Representatives of California  
San Gabriel Valley Council of Governments  
Santa Clara Valley Open Space Authority  
Solano County Water Agency  
Urban Counties of California  
Valley County Water District  
Walnut Valley Water District  
Water Replenishment District of Southern California

**Opposition**

None on file.

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