

Date of Hearing: June 15, 2022

ASSEMBLY COMMITTEE ON LOCAL GOVERNMENT

Cecilia Aguiar-Curry, Chair

SB 1100 (Cortese) – As Amended June 6, 2022

**SENATE VOTE:** 29-7

**SUBJECT:** Open meetings: orderly conduct.

**SUMMARY:** Allows the presiding member of a local legislative body to remove an individual for disrupting a local agency's meeting, defines "disrupting" for this purpose, and outlines the procedure that must be followed before an individual may be removed. Specifically, **this bill:**

- 1) Allows the presiding member of the legislative body conducting a meeting or their designee to remove, or cause the removal of, an individual for disrupting the meeting. Specifies that this authority is in addition to authority exercised pursuant to existing provisions of the Ralph M. Brown Act (Brown Act) that allow a local agency to adopt reasonable regulations for the conduct of meetings and remove a group or groups of persons from a meeting, as specified.
- 2) Requires, prior to removing an individual, the presiding member or their designee to warn the individual that their behavior is disrupting the meeting and that their failure to cease their behavior may result in their removal. The presiding member or their designee may then remove the individual if they do not promptly cease their disruptive behavior. This requirement does not apply to any behavior that constitutes use of force or a true threat of force, as defined in this bill.
- 3) Provides the following definitions for the purposes of this bill:
  - a) "Disrupting" means engaging in behavior during a meeting of a legislative body that actually disrupts, disturbs, impedes, or renders infeasible the orderly conduct of the meeting and includes, but is not limited to, one of the following:
    - i) A failure to comply with reasonable and lawful regulations adopted by a legislative body pursuant to specified existing provisions of the Brown Act that allow a local agency to adopt reasonable regulations for the conduct of meetings, or any other law.
    - ii) Engaging in behavior that constitutes use of force or a true threat of force.
  - b) "True threat of force" means a threat that has sufficient indicia of intent and seriousness, that a reasonable observer would perceive it to be an actual threat to use force by the person making the threat.
- 4) Expresses the intent of the Legislature to do the following:
  - a) Prescribe requirements for governing public meetings that are consistent with specified existing provisions of the Brown Act, which provide that a legislative body of a local agency shall not prohibit public criticism of the policies, procedures, programs, or services of the agency, or of the acts or omissions of the legislative body.

- b) Prescribe requirements for governing public meetings to protect civil liberties in accordance with the United States Constitution, the California Constitution, and relevant law.
  - c) Codify the authority and standards for governing public meetings in accordance with *Acosta v. City of Costa Mesa*, 718 F.3d 800, 811 (9th Cir. 2013), in which the court explained that an ordinance governing the decorum of a city council meeting is not facially overbroad if it only permits a presiding officer to eject an attendee for actually disturbing or impeding a meeting.
- 5) Finds and declares that Section 2 of this act, which adds Section 54957.95 to the Government Code, imposes a 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 limitation and the need for protecting that interest:

This act is necessary to give legislative bodies clear authorization to restore order to meetings in the event of actual disruptions that are disturbing, disrupting, impeding, or rendering infeasible the orderly conduct of the meeting and, thereby, preserve the rights of other members of the public at the meeting and allow the legislative body to continue its work on behalf of the public.

- 6) Finds and declares that Section 2 of this act, which adds Section 54957.95 to the Government Code, 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. 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 give legislative bodies clear authorization to restore order to meetings in the event of actual disruptions that are disturbing, disrupting, impeding, or rendering infeasible the orderly conduct of the meeting and, thereby, preserve the rights of other members of the public at the meeting and allow the legislative body to continue its work on behalf of the public.

#### **EXISTING LAW:**

- 1) Guarantees, in Article I, Section 3 of the California Constitution, that the people have the right to instruct their representatives, petition government for redress of grievances, assemble freely to consult for the common good, which includes a right to access information concerning the meetings and writings of public officials.
- 2) Requires local agencies to comply with certain state laws that outline the basic requirements for public access to meetings and public records. If a subsequent bill modifies these laws, it must include findings demonstrating how it furthers the public's access to local agencies and their officials.

- 3) Enacts the Brown Act, which outlines how local agencies must hold public meetings.
- 4) Requires local agencies to notice meetings in advance, including the posting of an agenda, and requires these meetings to be open and accessible to the public.
- 5) 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.
- 6) 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.
- 7) Requires that all meetings of the legislative body of a local agency be open and public, and all persons be permitted to attend any meeting of the legislative body of a local agency, except as otherwise provided in the Brown Act.
- 8) Provides that a legislative body of a local agency cannot prohibit public criticism of the policies, procedures, programs, or services of the agency, or of the acts or omissions of the legislative body.
- 9) Authorizes the legislative body of a local agency to adopt reasonable regulations related to the opportunity for the public to address the legislative body, including, but not limited to, regulations limiting the total amount of time allocated for public testimony on particular issues and for each individual speaker.
- 10) Provides that the members of the legislative body conducting the meeting may order the meeting room cleared and continue in session in the event that any meeting is willfully interrupted by a group or group of persons so as to render the orderly conduct of such meeting unfeasible, and order cannot be restored by the removal of individuals who are willfully interrupting the meeting. If the legislative body clears the meeting room, it must meet the following requirements:
  - a) Only matters that appear on the agenda may be considered in the continued session after clearing the room.
  - b) Representatives of the press or other news media are allowed to attend the continued session after clearing the room, except if they were participating in the disturbance.
  - c) Specifies that these provisions do not prohibit the legislative body from establishing a procedure for readmitting an individual or individuals not responsible for willfully disturbing the orderly conduct of the meeting.

**FISCAL EFFECT:** None.

**COMMENTS:**

- 1) **Author's Statement.** According to the author, "It has become increasingly clear that the mechanisms provided by the Brown Act to deal with disruptions during public meetings are insufficient. Across California, public officials and public attendees continue to deal with disorderly conduct during meetings at such a high magnitude that critical business and the legislative process as a whole has become impaired.

"As we have undoubtedly seen, many troubling incidents across the state, including those involving harassment and threats of violence, have demonstrated the need to protect public safety and public meeting access by modernizing the Brown Act so that it provides clearer standards around when removal of a meeting participant is warranted and what authority members of a legislative body can exercise.

"These are only a few examples that speak to the need for SB 1100:

- In 2021, Los Gatos Mayor Marico Sayoc and her family faced targeted bullying and harassment efforts at public meetings, including anti-LGBTQ rhetoric.
- In 2022, the Placentia-Yorba Linda Unified School Board has had to end multiple meetings early due to meeting disruptions.
- Recent San Diego Board of Supervisor meetings have made national headlines, in part, due to racist comments as well as threats of violence and personal attacks.

"We must take steps to clarify what behavior should be deemed as disruptive to ensure that this definition is only used with absolute neutrality for those rare occurrences and prioritize the safety of our officials who sit on local governing bodies as well as the public.

"By establishing common-sense mechanisms to deescalate significant disruptions and allow members of a legislative body to return to their important governmental business in a swift manner, this bill would enhance public access to meetings. SB 1100 will ensure safe, open, and accessible public meetings by creating a process to restore order when disruptions occur and presents safeguards to ensure implementation consistent with our First Amendment principles."

- 2) **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 local agencies to notice meetings in advance, including the posting of an agenda, and requires these meetings to be open and accessible to the public. 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 only allows local agencies to take actions, meaning a majority vote of the legislative body unless otherwise specified, on items that appear on the posted agenda.

- 3) **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. These restrictions must be content-neutral. For example, the local agency cannot restrict public criticism of its actions.

In the event that a group or groups willfully interrupt a meeting in a manner that makes the orderly conduct of the meeting unfeasible, and the legislative body cannot restore order by removing individuals causing the interruption, it can order the meeting room cleared and continue the meeting. However, it must allow members of the media to participate unless they participated in the disturbance. The Brown Act also allows the legislative body to readmit individuals who were not responsible for the disturbance.

- 4) **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.”

- 5) **Acosta v. City of Costa Mesa.** This bill states the intent of the Legislature to “codify the authority and standards for governing public meetings in accordance with *Acosta v. City of Costa Mesa*, 718 F.3d 800, 811 (9th Cir. 2013).” In this decision, the court found that an ordinance governing the decorum of a city council meeting is not facially overbroad if it only permits a presiding officer to eject an attendee for *actually* disturbing or impeding a meeting. The court explained that disruption cannot be defined in any manner, such as a violation of rules of decorum, but has to be an *actual* disruption of a meeting.

- 6) **Bill Summary.** This bill allows the presiding member of the legislative body conducting a meeting (or their designee) to remove an individual for disrupting the meeting. Before removing an individual, the presiding member or their designee must warn the individual that their behavior is disrupting the meeting and that their failure to cease their behavior may result in their removal. The presiding member or their designee may then remove the individual if they do not promptly cease their disruptive behavior. This requirement does not apply to any behavior that constitutes use of force or a true threat of force.

The bill defines “disrupting” to mean engaging in behavior during a meeting of a legislative body that actually disrupts, disturbs, impedes, or renders infeasible the orderly conduct of the meeting and includes, but is not limited to, one of the following:

- a) A failure to comply with reasonable and lawful regulations adopted by a legislative body pursuant to the existing provisions of the Brown Act that allow a local agency to adopt reasonable regulations for the conduct of meetings, or any other law.
- b) Engaging in behavior that constitutes use of force or a true threat of force.

The bill defines “true threat of force” to mean a threat that has sufficient indicia of intent and seriousness, that a reasonable observer would perceive it to be an actual threat to use force by the person making the threat.

This bill is sponsored by the California State Association of Counties and the Urban Counties of California.

- 7) **Related Legislation.** AB 1944 (Lee) allows, until January 1, 2030, 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, under specified conditions. AB 1944 is pending in the Senate Governance and Finance Committee.

AB 2449 (Rubio) allows, until January 1, 2028, 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, and without making each teleconference location accessible to the public, under specified conditions. AB 2449 is pending in the Senate Governance and Finance Committee.

- 8) **Previous Legislation.** 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.
- 9) **Arguments in Support.** The California State Association of Counties and the Urban Counties of California, sponsors of this bill, write, “Like many local agencies across the state and around the country, California counties are experiencing an increase in incidence of disruptive behavior by members of the public during public meetings. Regrettably, this behavior has included foul language, racist, misogynist, and homophobic slurs, and threats of

violence toward county supervisors and county staff. In many instances, other members of the public are also targeted for expressing opposing views.

“These behaviors not only disrupt the proceedings of the day, but fundamentally break the promise of the Brown Act, undermining the ability of members of the public to participate in the conduct of the public’s business safely and productively. To say that these types of behaviors have been disruptive to the normal conduct of county business is an understatement; they are stressful, demoralizing, and in some cases, frightening for their targets. Worse, when performative acts of disruption occur during recorded meetings, the footage is then shared on social media to garner additional attention and encourage others to do the same for the sole purpose of weakening government structure and function and shut out opposing voices.

“To be clear, counties are committed to ensuring the public’s right to access public meetings and scrutinize the decisions of public officials. However, as participants in our democratic government, we must also provide safe and accessible environments in which the public can express their views freely and without intimidation. SB 1100 offers an important tool for local agencies to make certain that public meetings are available to everyone. SB 1100 provides commonsense tools for local agencies to deal with the rising hostility and intimidation occurring during public meetings and ensure the efficient and effective conduct of the public’s business. At the same time, the bill safeguards the public’s right to address its elected leaders in public meetings under reasonable conduct requirements.”

- 10) **Arguments in Opposition.** Californians for Good Governance, in opposition to a prior version of the bill, states, “As amended on April 7, 2022, SB 1100 would “give legislative bodies clear authorization to restore order to meetings in the event of actual disruptions that are disturbing, disrupting, impeding, or rendering infeasible the orderly conduct of the meeting and, thereby, preserve the rights of other members of the public at the meeting and allow the legislative body to continue its work on behalf of the public.”

“Our concern is that the language of this bill is too vague to give meaningful guidance to local bodies in how to ensure rules comport with constitutional rights and would instead be interpreted as a general license to limit public participation in their meetings. Public participation in meetings inherently disrupts and impedes the orderly imposition of rules by governing bodies. That is the point. The reality is that participatory democracy is a messy business, but limiting public input is not the answer as it moves our government towards authoritarianism and away from democracy.”

- 11) **Double-Referral.** This bill is double-referred to the Judiciary Committee.

## **REGISTERED SUPPORT / OPPOSITION:**

### **Support**

California State Association of Counties [CO-SPONSOR]

Urban Counties of California [CO-SPONSOR]

All Rise Alameda

Association of California Water Agencies

Building the Base Face to Face

California Contract Cities Association  
California Municipal Utilities Association  
California Special Districts Association  
Change Begins With Me  
City Clerks Association of California  
City of San Jose  
Cloverdale Indivisible  
Contra Costa Moveon  
County of Monterey  
County of Santa Clara  
Defending Our Future: Indivisible in CA  
East Valley Indivisibles  
Educate. Advocate. (if amended)  
El Cerrito Progressives  
Feminists in Action Los Angeles  
Hillcrest Indivisible  
Indi Squared  
Indivisible 30/Keep Sherman Accountable  
Indivisible 36  
Indivisible 41  
Indivisible 52  
Indivisible Auburn CA  
Indivisible Beach Cities  
Indivisible CA 29  
Indivisible CA 34 Women  
Indivisible CA 37  
Indivisible CA Statestrong  
Indivisible CA-25 Simi Valley Porter Ranch  
Indivisible CA-3  
Indivisible CA-33  
Indivisible CA-39  
Indivisible CA-43  
Indivisible CA-7  
Indivisible Claremont/Inland Valley  
Indivisible Colusa County  
Indivisible East Bay  
Indivisible El Dorado Hills  
Indivisible Elmwood  
Indivisible Euclid  
Indivisible Lorin  
Indivisible Los Angeles  
Indivisible Los Gatos  
Indivisible Manteca  
Indivisible Marin  
Indivisible Media City Burbank  
Indivisible Mendocino  
Indivisible Normal Heights  
Indivisible North Oakland Resistance  
Indivisible North San Diego County

Indivisible OC 46  
Indivisible OC 48  
Indivisible of Sherman Oaks  
Indivisible Peninsula and CA-14  
Indivisible Petaluma  
Indivisible Sacramento  
Indivisible San Bernardino  
Indivisible San Jose  
Indivisible San Pedro  
Indivisible Santa Barbara  
Indivisible Santa Cruz County  
Indivisible Sausalito  
Indivisible Sebastopol  
Indivisible SF  
Indivisible SF Peninsula and CA-14  
Indivisible Sonoma County  
Indivisible South Bay LA  
Indivisible Stanislaus  
Indivisible Suffragists  
Indivisible Ventura  
Indivisible Windsor  
Indivisible Yolo  
Indivisible: San Diego Central  
Livermore Indivisible  
Mill Valley Community Action Network  
Mountain Progressives  
North Orange County Community College District  
Nothing Rhymes With Orange  
Orchard City Indivisible  
Orinda Progressive Action Alliance  
Our Revolution Long Beach  
Public Risk Innovation, Solutions, and Management (PRISM)  
Riseup  
Rooted in Resistance  
San Diego Indivisible Downtown  
Santa Cruz County Board of Supervisors  
SFV Indivisible  
Silicon Valley Clean Energy  
Tehama Indivisible  
The Resistance Northridge-Indivisible  
Together We Will Contra Costa  
Together We Will/Indivisible - Los Gatos  
Town of Los Gatos  
Upper San Gabriel Valley Municipal Water District  
Vallejo-Benicia Indivisible  
Venice Resistance  
Women's Alliance Los Angeles  
Yalla Indivisible

**Opposition**

Californians for Good Governance (prior version)  
Stand Up Sacramento County (prior version)

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